United States Court of Appeals

for the Second Circuit

APPENDIX

76-1087

76-1093
76-1094
76-1088

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

BENNY ONG, WONG WAH, TOM HOM and ALBERT YOUNG,

Defendants-Appellants.

UNITED STATES COURT OF APPEALS
FILED
APR 8 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

On Appeal from The United States District Court for the Southern District of New York

JOINT APPENDIX FOR DEFENDANTS-APPELLANTS, BENNY ONG, WONG WAH, ALBERT YOUNG and TOM HOM

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PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET

JUDGE BRIEANT

74 CRIM. 1127

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	Edward J. Kurtansky, AUSA,
1. BENNY ONG- 1-78	791-0036
2. WONG WAH-1, 35-62	
3. TOM HOM- 1,64-78	
4. ALBERT YOUNG- 1,79-99	For Defendant: 2/20

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
18:371 Consp. to commit bribery.(Ct.1)					
18:201(b) Bribery(Cts.2-99)					
(Ninty-Nine Counts)					

DATE	PROCEEDINGS
10-27-74	Filed indictment. B/W ordered as to deft. Tom Hom. Tyler,J.
11-9-74	Deft. Ong(atty. present) Pleads not guilty. Bail fixed by Mag., continued ($15,000. cash or surety.)
	Defts.Young and Wong(attys. present) Plead not guilty. Bail fixed by Mag. cont'd.($5,000, cash or surety as to both defts.) Motions returnable in 10 days. Case assigned to Judge ~~Tyler~~ BRIEANT for all purposes. Metzner,J.
11-[illegible]-74	WONG WAH. Filed notice of appearance of William C. Herman, 401 Bway. NYC 10013. Tel# 212-226-7971.
11-20-74	BENNY ONG- Filed notice of appearance of Daniel Markewich, 350 5th Ave, N.Y.C. 10001.

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
12-11-74	[illegible]		
1-3-75	Filed [illegible]		
1-14-75	TOM HOM- Bench Warrant Issued.		
2-21-75	TOM HOM- Deft. [illegible] pleads NOT GUILTY. Bail fix at $15,000. each of counts. Deft. [illegible] 2-21-75 to post Bail. Deft. ordered fingerprinted & photographed---BRIEANT, J.		
2-25	TOM HOM- Filed Warrant for Arrest of Deft dated 11-21-74 and entered return - Executed on 2-21-75 at U.S. Court House, NYC, (Deft. surrendered).		
3-11-75	ALBERT YOUNG- Filed Deft's Affdvt. and Notice of Motion to dismiss deft's first count of the indictment and severance of the trial from co-deft's.		
3-18-75	TOM HOM- Filed the following papers rec'd from Magistrate Raby, (Mag#75-293): Docket Entry Sheet - Warrant for Arrest of Deft - Appearance Bond for the amount of $15,000. dated 2-21-75 - Name of Surety, International Fidelity Ins. Co.		
3-27-75	ALBERT YOUNG- Filed Plaintiff's Memorandum in opposition to Deft's motion for dismissal of the conspiracy count and severance.		
4-3-75	ALBERT YOUNG- Filed Deft's Reply Memorandum in support of Motion for dismissal of the conspiracy count and/or severance.		
6-26-75	ALBERT YOUNG- Filed Memorandum & Order#42672.....By notice of motion dtd. 3-11-75, def moves for an order dismissing Court one of the indictment, the conspiracy count, and for a separate trial.....Deft's motion is in all respects denied...,So Ordered.....Brieant,J. mn..		
7-7-75	Filed transcript of record of proceedings, dated July 9, 1975		
11-17-75	Filed Govt'n requested Voir Dire Questions of Prospective Jurors.		

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DATE	PROCEEDINGS
11-17-75	Jury Trial Began as to all Defts. (Attys present) & Con'td
11-18-75	Trial Continued
11-19-75	" "
11-20-75	" "
11-20-75	" "
11-20-75	" "
11-20-75	" "
11-21-75	" "
11-22-75	" "
11-24-75	" "
11-25-75	" "
11-26-75	" "
11-28-75	" " & Concluded. Jury Verdict-Deft Ong guilty on Cts 1thru 61 & Cts 74 Thru 78.
	Wak-Guilty on cts 1, & 35 thru 63.
	Hom-Guilty on cts 1, & 64 thru 78.
	Young-Guilty on cts 79 thru 99.
	PSI Ordered. Sentences adj'd to 1-9-76-Bail cont'd on all defts..Brieant,J.
12-1-75	Filed Defts. Young & Wong's Request to Charge.
12-2-75	A. Young-Filed Letter from G. S. Rosenthal, deft's atty, to Judge Brieant, dtd 12-1-75.
12-3-75	ALL DEFTS-Filed Govt's Requests to Charge.
12-3-75	YOUNG & YONG-Filed Request to Charge by defts.
12-16-75	Filed Stip & Order that each of defts may make any motions pur to Rule 29 FRCR? in respect to the verdict rendered by the jury upon the trail and the same is ext until such time as to each defts might desire to make a written motion supported by papers ret. beofore Brieant,J. on a date not latter than 1-5-76.. .....Brieant,J.
12-29-75	Fld Deft. Wah's Notice of Motion to set aside the verdict and for an new trial .....1-5-76..(both defts Young and Wah)
12-29-75	WAH-Fld Memo of law in support of both defts motion for new trial (Young & Wah)
12-31-75	Filed transcript of record of proceedings, dated Nov 17, 18, 19-20-21-24-25
12-31-75	Filed transcript of record of proceedings, dated Nov 25-26-28-1975
1-13-76	Young & W. Wah-Fld Memo End on motion fld 12-29-75....Motions denied. See transcipt of Hearing.-So Ordered-Brieant,J. mn
2-11-76	A. Young-Fld Pre Sentence Memo on behalf of deft.
2-11-76	WONG WAH-Fld Judgment & Commitment Order..The deft is committed to the custody of the U.S. Atty Gen. for a period of THREE and ONE-HALF(3 1/2) YEARS on counts 1 and 35 thru 63, inclusive, to run concurrently with eachother. Deft continued on present bail until he ppst bail pending appeal fixed in the amt. of $5,000 cash or surety.....Brieant,J.
2-11-76	BENNY ONG-Fld Judgment & Committment- The deft is committed to the custody of the Atty Gen. for a period of FIVE(5) YEARS on count 1;EIGHT (8) YEARS on cts. 2 thru 61 and 74 thru 78, inclusive, to run concurrently with each other and concurrently with sentence imposed on count 1....Bail pening appeal fixed In the amt. of $25,000 cash or surety. Deft. Continued on preasnt bail until 5 P.M. on 2-12-76 at which time deft is to have posted bail pending appeal. .....Brieant,J.

Criminal Continuation Sheet

continued on page #A3

DATE	PROCEEDINGS
2-11-76	TOM HOM-Fld Judgment & Commitment Order....The deft is commited to the custody of the A Gen for imprisonment for a period of THREE(3) YEARS on cts 1 and 64 thru 78, inclusive, t run concurrently with each other...Deft. continued on presnet bail until he po bail pending appeal fixed in the amt. of $15,000 cash or surety..... .....Brieant,J.....
2-11-76	#-76,141 ALBERT YOUNG-FLD JUDGMENT & COMMITMENT-The deft. is committed to the custody of the Atty Gen. for imprisonment for a period of EIGHTEEN(18) MONTHS on cts 80 thru 99, inclusive, to run concurrently with each other and FINED $5,000. on ct. 79. Fine is to be paid or the deft is to stand committed until the fin is paid or he is otherwise discharged accouding to law...Deft is continued on presant bail until he posts bail pending appeal fixed in the amt. of $5,000 cash or surety.....Breiant,J.....
2-19-76	Benny Ong-Fld Mag Docket Sheet.
2-19-76	Benny Org-Fld Bond#E 2926---Pending Appeal in the amount of $25,000...by Internation Fidelity Ins Co-----Acknowledged before Mag. Bernikow.
2-20-75	ALBERT YOUNG-Fld Deft's Notice of Appeal to USCA from Judgment ent 2-11-76-Notices mailed on 2-23-76 to: U.S. Atty NYC & Deft.
2-20-76	WONG WAH-Fld Deft's Notice of Appeal to USCA from Judgment ent 2-11-76-Notices mailed on 2-23-76 to :U.S. Atty's off. NYC & Deft.
2-23-76	BENNY ONG-Fld deft's Notice of Appeal to USCA from judgment of 2-11-76 Notices mailed on 2-23-76 to U.S. Atty's office NYC & Deft.
2-20-76	TOM HOM-Fld deft's Notice of Appeal to USCA from judgment of 2-11-76....Mailed copies on 2-24-76 to:Deft & U.S. Atty Off.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By E. Thompson
Deputy Clerk

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73-3537

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- : INDICTMENT

: 74 Cr. 1127

BENNY ONG, a/k/a Benny Eng, a/k/a Hong Shew Ong, a/k/a Cai Shew Eng, a/k/a "Uncle Seven", WONG WAH, a/k/a Wah Wong, a/k/a Pit Wah Wong, TOI HOM, a/k/a Tom Hok, a/k/a Chu Ting Hon, a/k/a Chee Ting Tom, a/k/a Seu Hong Hom, a/k/a "Mr. Tom", and ALBERT YOUNG, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young,

Defendants.

INTRODUCTION

The Grand Jury charges:

1. The defendant BENNY ONG, a/k/a Benny Eng, a/k/a Hong Shew Ong, a/k/a Cai Shew Eng, a/k/a "Uncle Seven" (hereinafter referred to as the defendant BENNY ONG), at all times relevant to this Indictment, was the English-speaking Secretary of the Hip Sing Association, a Chinese benevolent association located at 16 Pell Street, New York, New York, and was the manager of an illegal gambling business conducted on the ground floor of No. 9 Pell Street, New York, New York.

2. The defendant WONG WAH, a/k/a Wah Wong, a/k/a Pit Wah Wong (hereinafter referred to as the defendant WONG WAH), at all times relevant to this indictment, was the English-speaking Secretary of the Tai Look Association, a Chinese benevolent association located at 58 East Broadway, New York, New York, and was the manager of an illegal gambling business conducted, prior to March, 1974, at 58 East Broadway, New York, New York, and thereafter, on the first floor of No. 7 Division Street, New York, New York.

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3. The defendant TOM HOM, a/k/a Tom Hok, a/k/a Chu Ting Hom, a/k/a Chee Ting Hom, a/k/a Seu Hong Hom, a/k/a "Mr. Tom" (hereinafter referred to as the defendant TOM HOM), at all times relevant to this indictment, was the manager of an illegal gambling business conducted on the basement floor of No. 61 Mott Street, New York, New York.

4. The defendant ALBERT YOUNG, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young (hereinafter referred to as the defendant ALBERT YOUNG), at all times relevant to this indictment, was the English-speaking Secretary of the Tsung Tsin Association, a Chinese benevolent association located at No. 1 Division Street, New York, New York, and was the manager of an illegal gambling business conducted on the basement floor of No. 1 Catherine Street, New York, New York.

COUNT ONE

The Grand Jury further charges:

5. From on or about October 14, 1973, up to and including July 18, 1974, in the Southern District of New York, BENNY ONG, WONG WAH, TOM HOM and ALBERT YOUNG, the defendants, unlawfully, wilfully and knowingly, together and with each other and with other persons to the Grand Jury known and unknown, did combine, conspire, confederate and agree to commit crimes against the United States of America, to wit, to violate Title 18, United States Code, Sections 201(b) and 2.

6. It was part of said conspiracy that BENNY ONG, WONG WAH, TOM HOM and ALBERT YOUNG, the defendants, would and did agree to, and would and did, directly and indirectly, corruptly give, offer and promise things of value, to wit,

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money, to certain public officials of the United States, namely, Lawrence V. Granelli and James E. Kibble, Criminal Investigators of the Immigration and Naturalization Service (INS), United States Department of Justice, with intent: (a) to influence official acts; (b) to influence said public officials to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States; and (c) to induce said public officials to do and to omit to do acts in violation of their lawful duties, to wit, to influence and induce said public officials to cause INS to cease conducting official area control search operations for illegal aliens at the sites of defendants' respective illegal gambling businesses, as described in paragraphs 1 through 4 of this indictment, and/or to provide the defendants in advance with confidential information concerning the time, place and date of such proposed search operations.

7. Among the means by which the defendants and their co-conspirators would carry out their agreed upon unlawful purposes were the following:

(a) The defendant BENNY ONG would offer INS Criminal Investigators Lawrence V. Granelli and James E. Kibble money in return for their notifying him in advance as to when INS would conduct official area control search operations for illegal aliens at his illegal gambling house at No. 9 Pell Street and/or for their causing INS to cease conducting such search operations altogether, and the defendant BENNY ONG would thereafter make regular cash payments for such purposes to Investigators Granelli and Kibble, who were posing as corrupt agents, but were in fact at all times reporting said offers and payments to the federal authorities.

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(b) The defendant BENNY ONG would introduce the defendant WONG WAH to Investigators Granelli and Kibble for the purpose of WONG WAH similarly offering money to Granelli and Kibble, and the defendant WONG WAH would thereafter, either directly or through the defendant BENNY ONG, make regular cash payments to Investigators Granelli and Kibble in exchange for protection of the defendant WONG WAH's illegal gambling house at 58 East Broadway and later at No. 7 Division Street.

(c) The defendant ALBERT YOUNG would similarly offer money to Investigators Granelli and Kibble in exchange for protection of his illegal gambling house at No. 1 Catherine Street, and the defendant ALBERT YOUNG would thereafter make regular cash payments to Investigators Granelli and Kibble for such purpose.

(d) The defendant BENNY ONG would introduce the defendant TOM HOM to Investigators Granelli and Kibble for the purpose of TOM HOM similarly offering money to Granelli and Kibble, and the defendant TOM HOM would thereafter, either directly or through the defendant BENNY ONG, make regular cash payments to Investigators Granelli and Kibble in exchange for protection of his illegal gambling house at No. 61 Mott Street.

OVERT ACTS

In furtherance of, and to effect the objects of the conspiracy, certain overt acts were committed by the defendants in the Southern District of New York, including the following:

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1. On or about October 14, 1973, the defendant BENNY ONG met with Investigators Granelli and Kibble in the vicinity of Mott and Bayard Streets, New York, New York.

2. On or about November 15, 1973, the defendants BENNY ONG and WONG WAH met with Investigators Granelli and Kibble in Columbus Park, New York, New York and gave Granelli and Kibble $400 in cash.

3. On or about December 12, 1973, the defendant ALBERT YOUNG met with Investigators Granelli and Kibble in an automobile in the vicinity of No. 1 Catherine Street, New York, New York.

4. On or about December 13, 1973, the defendant ALBERT YOUNG met with Investigators Granelli and Kibble at the Jade Chalet Bar, 199 Worth Street, New York, New York and gave them $200 in cash.

5. On or about January 17, 1974, the defendants BENNY ONG and TOM HOM met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York.

6. On or about January 23, 1974, the defendants BENNY ONG, WONG WAH and TOM HOM each met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York, and each defendant gave Granelli and Kibble $200 in cash.

7. On or about March 13, 1974, the defendants BENNY ONG, WONG WAH and TOM HOM met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York, and each defendant gave Granelli and Kibble $200 in cash.

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8. On or about April 11, 1974, the defendant ALBERT YOUNG met with Investigators Granelli and Kibble in an automobile in the vicinity of Madison and Catherine Streets, New York, New York and gave them $400 in cash.

9. On or about April 11, 1974, the defendant BENNY ONG met with Investigators Granelli and Kibble in an automobile in the vicinity of North Street and Columbus Park, New York, New York and gave them $200 in cash.

10. On or about May 8, 1974, the defendant ALBERT YOUNG met with Investigators Granelli and Kibble in the vicinity of Chatham Square, New York, New York and gave them $400 in cash.

11. On or about May 8, 1974, the defendant BENNY ONG met with Investigators Granelli and Kibble in an automobile in the vicinity of Columbus Park, New York, New York and gave them $1000 in cash.

12. On or about June 20, 1974, the defendant BENNY ONG met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York and gave them $600 in cash.

13. On or about June 26, 1974, the defendant BENNY ONG met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York and gave them $800 in cash.

14. On or about July 3, 1974, the defendant BENNY ONG met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York and gave them $800 in cash.

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15. On or about July 3, 1974, the defendant ALBERT YOUNG met with Investigators Granelli and Kibble in an automobile in the vicinity of Henry and Catherine Streets, New York, New York and gave them $200 in cash.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH THIRTY

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, BENNY OKG, the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give, offer and promise things of value, to wit, money in the amounts hereinafter set forth, to public officials of the United States, namely, Lawrence V. Granelli and James E. Kibble, Criminal Investigators of the Immigration and Naturalization Service (INS), United States Department of Justice, with intent: (a) to influence official acts; (b) to influence said public officials to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States; and (c) to induce said public officials to do and to omit to do acts in violation of their lawful duties, to wit, to influence and induce said public officials to cause INS to cease conducting official area control search operations for illegal aliens at the site of the defendant's illegal gambling business at No. 9 Pell Street, New York, New York and/or to provide the defendant in advance with confidential information concerning the time, place and date of such proposed search operations;

AFTERNOON SESSION

2:00 p.m.

(In open court; jury present)

CHARGE OF THE COURT

Bricant, J.

THE COURT: Mr. Carrier and members of the jury:

We are now at that stage in the trial where you will soon undertake your final function as jurors, and here you perform one of the most sacred obligations of citizenship, and that is acting as ministers of justice. You are to discharge this final duty in an attitude of complete fairness and impartiality and, as was emphasized by me when you were first selected, without bias or prejudice for or against the Government or for or against any defendant as parties to this controversy.

Let me state that the fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, individuals and Government alike, stand as equals before the bar of justice.

Your final role here is to decide and pass upon the fact issues in this case. You are the sole and exclusive

judges of the facts. You determine the weight of the evidence, you appraise the credibility or truthfulness of the witnesses, you draw the reasonable inferences from the evidence, and you resolve such conflicts as there may be in the evidence. I shall later tell you how you determine the credibility of witnesses.

My final function is to instruct you as to the law and it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them to be. You are not to consider any one instruction which I give you alone as stating the law, but you must consider all my instructions taken together as a whole.

With respect to any fact matter, it is your recollection, and yours alone, that governs. Anything that the lawyers, either for the Government or a defendant, may have said with respect to matters in evidence, either during the trial in a question, in argument or in summations, is not to be substituted for your own recollection of the evidence. So, too, anything I might have said during the trial or anything I might refer to in the course of these instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

Put out of your mind any exchanges which may have occurred during the trial between the lawyers or between

any attorney and the Court. It is not my function to favor one side or the other, or to criticize anybody in any way whatsoever, or to indicate to you, the jury, in any way that I have any opinion as to the credibility of any witness, or as to the guilt or innocence of a defendant. That is your function, it is yours alone, and I leave it entirely with you.

So please do not assume that I hold any opinion in any matters concerning this case, and please don't reach any conclusion that I may have some attitude or that I may tend to favor one side or the other in the case. I do not.

As I said at the beginning, the indictment here itself is not evidence of the crimes charged. Instead, an indictment is merely the method or the procedure under the law whereby persons accused of crimes by a grand jury are brought into court to have their case decided by a trial jury, such as yourselves.

Therefore, the indictment must be given no evidentiary value but shall be treated by you only as an accusation. It is not evidence or proof of any defendant's guilt and no weight or significance whatsoever is to be given by you to the fact that an indictment has been returned against a defendant.

They have each pleaded not guilty, and thus the Government has the burden in each case and with respect to each count of proving the charges beyond a reasonable doubt. A defendant does not have to prove his innocence.

On the contrary, he is presumed to be innocent of each of the accusations contained in the indictment. This presumption of innocence was in his favor at the start of the trial, as I believe I told you before, it continued in his favor throughout the trial, and it is in his favor now, and the presumption of innocence remains in his favor during the course of your deliberations in the jury room. And the presumption of innocence is removed only if and when you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

Of course, unless you are so convinced as to any defendant on any count, you must find the defendant whose case you are considering not guilty as to that count or counts.

Now, the question naturally comes up, what is a reasonable doubt? Well, members of the jury, those words almost define themselves. That is a doubt founded on reason arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after

carefully weighing all the evidence.

Reasonable doubt is a doubt that appeals to your reason, to your judgment, to your common sense and to your experience. It is not caprice or whim or speculation or conjecture or suspicion. It is not an excuse to avoide the performance of an unpleasant duty, and it is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say you are not satisfied of the guilt of a defendant on a particular count or charge, that you do not have an abiding conviction of his guilt of the particular charge, in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of improtance to yourselves, then you have a reasonable doubt, and in that circumstance it is your duty to acquit that defendant whose case you are then considering as to that count or charge that you are then considering.

On the other hand, if, after such an impartial and fair consideration of all the evidence, you can candidly and honestly say you do have an abiding conviction of the defendant's guilt, such a conviction as you would be willing to act upon in important and weighty matters in important affairs of your own life, then you have no

reasonable doubt, and under those circumstances it is your duty to convict.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would ever be convicted, because it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, is not susceptible to mathematical certainty. And for that reason, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

The indictment in this case, members of the jury, contains 99 counts, and each count charges a separate crime and they must each be considered separately as to each defendant named therein. The indictment names four defendants in all.

In the determination of whether the Government has proven the guilt of any defendant, you must bear in mind that guilt is personal. The guilt or innocence of each defendant or, rather, the question of whether the Government has proved guilt beyond a reasonable doubt as to each defendant on trial before you must be determined separately with respect to him, separately with respect to each count

and solely on the evidence presented against him or the lack of evidence. The case of a defendant stands or falls on the proof or the lack of proof of the charge against him and not against somebody else.

The burden of proof is the same as to each count, and the same presumption of innocence exists as to each count. And if you find a defendant guilty on a particular count, that is not a factor to be considered by you in determining whether he has been proven guilty beyond a reasonable doubt of the next count which you will be considering. And, indeed, you may give no consideration whatsoever to the rather large number of counts in the indictment, nor should you infer or conclude from the fact that there are so many counts that that in itself has any bearing whatsoever on the case. I assure you it does not.

Now, the attorneys not only have their right but their duty to make objections and to press whatever legal theories they may have. They are only doing their duty here, to the Court and to their clients. When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate or guess as to what the witness would have said if he had been permitted to answer the question.

Also, when the Court has directed that an answer to a question be stricken out, you must disregard anything that you may have heard prior to my direction and treat it as if it were not said for, indeed, it is not a part of the trial record before you in this case.

During the trial, the jurors will recall that Mr. Rosenthal, the attorney for the defendant Albert Young, made objections to certain evidence and was granted a reserved motion to strike by the Court. On those occasions I believe I said in response to his objection that "you have a reserved motion to strike," or I said, "I am talking this subject to connection."

Now, the Court has since stricken out, with respect to Mr. Young, any evidence, any conversations or activities which did not take place in Mr. Young's presence or to which he was not a party, and in determining the case of Albert Young, you cannot consider anything said concerning Albert Young on any of the tapes by any of the other defendants, nor may you consider any conversations which anybody had with the agents concerning Albert Young when Albert Young was absent.

Whether or not you can consider conversations of the other defendants, other than Young, which took place in the absence of the other defendant whose case you

are considering, is a matter which I will take up with you later when I discuss certain aspects of the conspiracy charge.

Now, for your guidance in considering the evidence, I must tell you that there are two classes of evidence recognized and admitted in courts of justice, upon either or both of which the jurors may find an accused guilty of a crime. One is called direct evidence and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any other amplification, although, of course, there is always the question as to whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the mind to believe that the facts sought to be established are true.

There is a traditional example. It may not be too meaningful on this lovely day, but sometimes if you are in a high building it is difficult to tell merely by looking out the window whether it is raining outside. But if you look out and you see people passing by in the

street below have their umbrellas up, you will generally come to the conclusion that it is raining.

You have direct evidence, the evidence of your own eyes, which tells you that the umbrellas are up, and that constitutes circumstantial evidence from which you are entitled to conclude that it must be raining. In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts in issue.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of any defendant as to any count before he may be convicted of that count.

In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth and the degree of weight you choose to give to that testimony. The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood or because the witness did not accurately see or hear what he testified about, or because his recollection of the event is faulty, or because he has not expressed himself clearly in giving testimony.

There is no magic formula by which you can evaluate testimony. You bring to this courtroom all the experience and background of your everyday lives. In your everyday affairs you determine for yourselves the reliability of statements made to you by other people. The same tests you use in your everyday dealings are the tests which you apply in your deliberation. In other words, you rely on your common sense.

You may, of course, consider the interest or lack of interest of any witness in the outcome of the case. A witness who is interested in the outcome of a case is not necessarily unworthy of belief. The interest of a witness, however, is a fact or a possible motive which you may consider in determining the weight and credibility to be given to his testimony.

In doing this, you should also consider whether the testimony of a witness is corroborated or borne out by the testimony of others or by documentary evidence or by exhibits.

You may also consider the manner in which the witness gives his testimony on the stand. The appearance and conduct of the witness in giving his testimony, the opportunity the witness had to observe the facts concerning which he testifies, and the probability or

improbability of the testimony in the light of all the other events in the case.

You may also consider whether a witness had any motive to lie. These are all items to be taken into your consideration in determining the truthfulness and weight, if any, which you will assign to that witness' testimony.

If such considerations make it appear to you that there is a discrepancy in the evidence, you will have to consider whether this may be reconciled by fitting the two witnesses' tsetimony together. If that is not possible, you will then have to determine which of the two conflicting versions you will accept.

(Continued on next page)

During this trial you have heard the testimony of an agent of the Federal Bureau of Investigation and of two criminal investigators of the Immigration and Naturalization Service.

The fact that a witness is employed by a law enforcement body entitles his testimony to no greater weight than you would give to any other witness. You are to examine this testimony with the same care you use in examining the testimony of any witness regardless of the profession or the employment which that witness has.

If you find that any witness has wilfully testified falsely as to any material fact - in other words, he has lied - you may, but you need not, disregard the entire testimony of that witness, on the principle that one who testifies falsely about one material fact may testify falsely about everything. But you are not required to consider such a witness as totally unworthy of belief. You may accept so much of his testimony as you deem true and disregard what you believe is false.

You, as sole judges of the facts, determine which of the witness you will believe, what portion of their testimony you will accept and what weight you will give to it.

Now, a lie, as used in the context I have just

mentioned, is not a mere mistake or inadvertence. All of us know what a lie is. It is an intentional telling of a falsehood.

Conversely, negligence or mistake or inadvertence is not a lie.

Now, members of the jury, the law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt, no inference of any kind may be drawn from the failure of a defendant to testify.

The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence whatsoever.

Now, during the trial you heard some tapes, and some transcriptions were furnished to you to assist you in following the tapes. Now, the whole question of electronic eavesdropping is a matter of serious philosophical dispute in the country today, and there are many people who believe that nothing should ever be taped, and others who believe that it is perfectly all right to eavesdrop on everything. These great issues are not your concern in this case. I instruct you that as a matter of law the use of a recorder as it was used in this case is permissible and violates no one's rights. This is so, essentially, because

Investigators Granelli and Kibble were participants in the conversations, consented to have them recorded. That consent does not have to be in writing; it may be oral or it may be merely implied from the mere fact of voluntarily wearing the machine that records on your body. Obviously, a party to a conversation can testify to a conversation, and if he can testify to what was said, it is also perfectly proper to have a tape which will also testify as to what was said.

A tape is often used to corroborate the oral testimony of a witness who was a party to the conversation, and that is what was sought to be done in this case.

By giving a verdict in this case you are not asked to determine whether or not you agree with the policies or the laws relating to eavesdropping.

Putting it another way, if you are satisfied beyond a reasonable doubt, as I have already defined reasonable doubt to you, that on the date and the place with which we are concerned a defendant committed an offense charged in the indictment, you must find that defendant guilty even though you may believe his apprehension came about in some measure by the Government availing itself of eavesdropping or recording facilities.

You will consider what weight is to be given to

the evidence of these tapes in the same way that you will consider the weight and significance of all the evidence in the case.

As I told you at the time we received the tapes in evidence, typewritten transcripts which were also received by you are not the best evidence of what is on the tapes, but, rather, your knowledge and recollection of what you personally have heard is controlling over what is typed on the transcripts; and, as I am sure I told you earlier, the transcripts were admitted only to assist you in listening to and understanding the tapes.

Now, the charge of conspiracy against the defendant Albert Young contained in Count 1 of the indictment is not being presented to you for your verdict. In this respect, you must not speculate or wonder why this is so, or the basis upon which I had made my ruling withdrawing that count from your consideration.

You must disregard absolutely any suggestion whatsoever of illegal conduct on the part of the defendant Albert Young arising out of that conspiracy count, and must restrict your deliberations and considerations of the evidence which is before you regarding Albert Young to the question of whether or not the Government has proven Albert Young guilty of the substantive crimes charged, starting

in Counts 79 through 99 inclusive.

I have earlier said that each count charges a separate crime, and while there may be facts common to some of these charges, you must consider each count separately. As a matter of convenience I will refer to these counts as either the conspiracy count or the substantive counts.

Count 1 is the conspiracy count and all the rest of the counts are substantive counts.

Now, essentially, members of the jury, Count 1 charges that the defendants Benny Ong, Wong Wah and Tom Hom, conspired together to bribe two employees of the Immigration and Naturalization Service, which I may refer to as INS, and to induce these employees to cause INS to provide these defendants in advance with information concerning the date, time and place of proposed search operations and/or to cease conducting searches for illegal aliens at certain locations, which all parties concede to have been sites at which gambling may have been conducted.

Counts 2 through 99 are the substantive counts. In each count the defendant or defendants named in that count is charged with a violation of Section 201(b) of Title 18, United States Code. It is not essential for you to remember the number, but it is important that you

understand what the statute declares to be unlawful.

Each of these counts charges that at the times stated in the indictment, the defendant or defendants charged in that count directly or indirectly gave, offered and promised INS employees money with intent to induce them to act in violation of their lawful duties as public officials of the United States.

Each substantive count charges a separate crime by the defendant or defendants therein named.

Counts 2 through 34 relate only to the defendant Benny Ong. These counts charge that on certain named dates from November 15, 1973 through July 17, 1974, the defendant Ong made 33 separate payments to the INS employees to induce them to do or to omit to do an act in violation of their lawful duties.

Counts 35 through 61 charge that on 27 separate occasions from November 15, 1973 through July 17, 1974, the defendant Benny Ong, aided and abetted by Wong Wah -- and I will define those words "aid and abet" later -- made payments to the same INS employees for the same unlawful purpose.

Counts 62 and 63 charge that the defendant Wong Wah himself on January 23, 1974 and on March 13, 1974 made two payments to these INS employees for the same unlawful

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purpose.

Counts 64 through 73 inclusive charge that the defendant Tom Hom, also referred to during this trial as Tom Hok, on ten separate occasions from January 23, 1973 to March 27, 1974 made unlawful payments to the INS employees.

Counts 74 through 78 charge that the defendant Benny Ong, aided and abetted by Tom Hom, made five additional payments between June 20, 1974 to July 17, 1974 to the INS employees.

Counts 79 through 99 charge that the defendant Albert Young made 21 separate payments to INS employees from December 21, 1973 to July 17, 1974 to induce them to do or omit to do an act in violation of their lawful duties.

Now I am going to discuss first with you the Count 1 or so-called conspiracy count.

A conspiracy to commit a crime is a separate offense distinct and apart from the substantive crimes which the conspiracy was formed to accomplish. Thus, the crime of conspiracy to commit bribery is different from the substantive crime of bribery even though many of the same facts relate to both crimes. Conspiracy focuses on the danger to the public of an agreement or plan by two or more persons acting together to violate the law, whereas the substantive crime focuses on the carrying out of that

agreement, whether by a single person or more than one.

Now, Section 271 of Title 18, United States Code, which is the Federal law which makes conspiracy a crime, reads in pertinent part as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy," each is guilty of the crime.

Count 1, the conspiracy count of the indictment I will now read to you in part. Specifically it charges that the defendants Benny Ong, Wong Wah and Tom Hok from on or about October 14, 1973, up to and including July 18, 1974, in the Southern District of New York conspired and agreed with each other to directly or indirectly, corruptly give, offer and promise money to certain public officials of the United States, namely, Lawrence V. Granelli and James L. Kibble, criminal investigators of the Immigration and Naturalization Service of the United States Department of Justice with intent: (a) To influence official acts; (b) To influence said public officials to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United

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States; and (c) To induce said public officials to do and to omit to do acts in violation of their lawful duties.

Specifically the indictment charges that these payments were to be made to induce the INS officials to cause INS to cease conducting official area control searches for illegal aliens or to provide these defendants in advance of confidential information concerning the time, place and date of search operations at certain locations in the so-called Chinatown area of New York City, or both.

I will now read the introductory portion of the indictment and the first count.

"Introduction

"1. The defendant Benny Ong, a/k/a Benny Eng, a/k/a Hong Shew Ong, a/k/a Gai Shew Eng, a/k/a 'Uncle Seven' (hereinafter referred to as the defendant Benny Ong), at all times relevant to this indictment, was the English-speaking secretary of the Hip Sing Association, a Chinese benevolent association located at 16 Pell Street, New York, New York, and was the manager of an illegal gambling business conducted on the ground floor of No. 9 Pell Street, New York, New York.

"2. The defendant Wong Wah, a/k/a Wah Wong, a/k/a Pit Wah Wong (hereinafter referred to as the defendant Wong Wah), at all times relative to this indictment, was

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the English-speaking secretary of the Tai Look Association, a Chinese benevolent assocation located at 58 East Broadway, New York, New York, and was the manager of an illegal gambling business conducted, prior to March 1974, at 58 East Broadway, New York, New York, and thereafter, on the first floor of No. 7 Division Street, New York, New York.

"3. The defendant Tom Hom, a/k/a Tom Hok, a/k/a Chu Ting Hom, a/k/a Chee Ting Hom, a/k/a Seu Hong Hom, a/k/a 'Mr. Tom' (hereinafter referred to as the defendant Tom Hom), at all times relevant to this indictment, was the manager of an illegal gambling business conducted on the basement floor of No. 61 Mott Street, New York, New York."

The next paragraph pertains to the defendant Albert Young. It is part of the introduction, and I think I will read it at this time for convenience:

"4. The defendant Albert Young, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young (hereinafter referred to as the defendant Albert Young), at all times relative to this indictment, was the English-speaking secretary of the Tsung Tsin Association, a Chinese benevolent association located at No. 1 Division Street, New York, New York, and was the manager of an illegal gambling business conducted on the basement floor

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of No. 1 Catherine Street, New York, New York.

COUNT 1

"The Grand Jury further charges:

"5. From on or about October 14, 1973, up to and including July 18, 1974, in the Southern District of New York, Benny Ong, Wong Wah and Tom Hom, the defendants, unlawfully, wilfully and knowingly, together and with each other and with other persons to the Grand Jury known and unknown, did combine, conspire, confederate and agree to commit crimes against the United States of America, to wit, to violate Title 18, United States Code, Sections 201(b) and 2.

"6. It was part of said conspiracy that Benny Ong, Wong Wah, Tom Hom, the defendants, would and did agree to, and would and did, directly and indirectly, corruptly give, offer and promise things of value, to wit, money, to certain public officials of the United States, namely, Lawrence V. Granelli and James E. Kibble, Criminal Investigators of the Immigration and Naturalization Service (INS), United States Department of Justice, with intent: (a) to influence official acts; (b) to influence said public officials to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States; and (c) to induce said public officials

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to do and to omit to do acts in violation of their lawful duties, to wit, to influence and induce said public officials to cause INS to cease conducting official area control search operations for illegal aliens at the sites of defendants' respective illegal gambling businesses, as described in paragraphs 1 through 4 of this indictment, and/or to provide the defendants in advance with confidential information concerning the time, place and date of such proposed search operations.

"7. Among the means by which the defendants and their co-conspirators would carry out their agreed upon unlawful purposes were the following:

"(a) The defendant Benny Ong would offer INS Criminal Investigators Lawrence V. Granelli and James E. Kibble money in return for their notifying him in advance as to when INS would conduct official area control search operations for illegal aliens at his illegal gambling house at No. 9 Pell Street and/or for their causing INS to cease conducting such search operations altogether, and the defendant Benny Ong would thereafter make regular cash payments for such purposes to Investigators Granelli and Kibble, who were posing as corrupt agents, but were in fact at all times reporting said offers and payments to the Federal Bureau of Investigation.

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"(b) The defendant Benny Ong would introduce the defendant Wong Wah to Investigators Granelli and Kibble for the purpose of Wong Wah similarly offering money to Granelli and Kibble, and the defendant Wong Wah would thereafter, either directly or through the defendant Benny Ong, make regular cash payments to Investigators Granelli and Kibble in exchange for protection of the defendant Wong Wah's illegal gambling house at 58 East Broadway and later at No. 7 Division Street.

"(c) The defendant Benny Ong would introduce the defendant Tom Hom to Investigators Granelli and Kibble for the purpose of Tom Hom similarly offering money to Granelli and Kibble, and the defendant Tom Hom would thereafter, either directly or through the defendant Benny Ong, make regular cash payments to Investigators Granelli and Kibble in exchange for protection of his illegal gambling house at No. 61 Mott Street.

" OVERT ACTS

"In furtherance of, and to effect the objects of the conspiracy, certain overt acts were committed by the defendants in the Southern District of New York, including the following:"

And there are thereafter a number of overt acts which I will read to you a little later on when I

discuss the matter of the overt acts.

Now members of the jury, there are three essential elements of the conspiracy charge. In order for you to reach a guilty verdict on the conspiracy count as to any defendant, you must first find that the Government has established as to him beyond a reasonable doubt each of the following elements. I am about to list the three elements:

First: That the conspiracy charged in Count 1 did in fact exist, that is, that two or more persons agreed to directly or indirectly give money to INS investigators to induce them to do or omit to do acts in violation of their duties at some point at or about the time alleged in the indictment, which is from October 14, 1973 to July 18, 1974.

Second: That the defendant whose case you are considering knowingly and wilfully associated himself with the conspiracy; in other words, that he became a member of it.

And the third element: That at least one of the co-conspirators committed in this District at least one of the overt acts set forth in the indictment.

Now, the first element which you must consider is whether the conspiracy charged in this indictment existed.

Now, what is a conspiracy? Well, for our

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purposes in this case a conspiracy is simply a combination or agreement or understanding reached by two or more persons to commit a Federal crime. Thus, a conspiracy is a partnership for criminal purposes in which each member becomes the agent of every other member.

The gist of the crime of conspiracy is a combination or agreement to violate the law together. This does not mean that two or more persons must meet and sign a solemn compact of some kind, nor does it mean that they must sit down and agree in so many words on what their unlawful scheme is to be or how they are going to carry it out. Common sense will tell you that when men in effect undertake to enter upon a criminal conspiracy, much is left to informal understanding.

Conspirators do not loudly proclaim their plans or make public their purposes.

It is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. You need not find that all of the co-conspirators alleged in the indictment joined in the conspiracy for you to find that a conspiracy existed. Instead you need only find that one of the alleged co-conspirators entered into an unlawful agreement with one or more other persons for the purposes

set forth in the indictment in order to find that a conspiracy as charged existed.

A conspiracy requires at least two persons who have conspired together. Under the circumstances presented in this indictment, you could not find a conspiracy existed on the basis of an agreement between any single defendant and one or more INS investigators. The two persons who conspired together to commit bribery must be two persons other than the official who is intended to be bribed. So that you can't account either Granelli or Kibble in reaching the necessary number of two or more.

In determining whether there has been such an unlawful agreement, you may judge the acts and conduct of the members of the alleged conspiracy which intend to carry out an apparent criminal purpose. The old adage, "Actions speak louder than words" is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual co-conspirators, which acts, however, when taken together in connection with each other and with reasonable inferences flowing from such acts, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof will show.

The offense is complete when the unlawful agree-

ment is made, and any single overt act to effect the object of the conspiracy is thereafter committed by at least one of the co-conspirators.

In determining whether the conspiracy charged in this indictment actually existed, you may consider the evidence of the acts and conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence. If, upon consideration of the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way, and that they have agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is complete, and the first element will have been satisfied.

Whether or not the defendants ever accomplished, or could accomplish the object of their conspiracy is immaterial to the question before you of whether the Government has proven the guilt of a particular defendant beyond a reasonable doubt.

Now, in considering the first element of whether a conspiracy existed, a further matter which the Government must prove to your satisfaction beyond a reasonable doubt, if any defendant is to be convicted on Count 1, is that a

single overall conspiracy of the nature charged in the indictment exists. I use the words "single overall" in contrast to the concept of several, separate and independent conspiracies involving various groups of conspirators.

It is the Government's theory that Benny Ong, Wong Wah and Tom Hom conspired together in a single scheme to bribe the investigators of the Immigration and Naturalization Service.

In determining whether there was a single overall conspiracy, you may consider what the evidence shows as to changes of personnel and activity. You may find a single conspiracy even though there were changes in personnel and activities provided that you find that some of the conspirators continued throughout the life of the conspiracy and that the purpose of the conspiracy continued to be that charged in the indictment.

The fact that the parties are not always identical does not mean that there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall purpose and the same nucleus of participants, the conspiracy would be the same basic scheme even though in the course of its operation additional conspirators joined in and performed additional functions to carry out the scheme.

In essence, the question is: What is the nature of the agreement? That is for you to determine after examining all the evidence. And when I say "the agreement," I suppose I should add the agreement, if any, and I want to assure you that any statement I make to you is not to suggest or indicate any factual inference on your part.

Now, the defendants Benny Ong, Wong Wah and Tom Hom contend that the Government has failed to prove the existence of the single conspiracy alleged, and that, at best, the evidence shows the existence of two separate and independent conspiracies involving two persons in each conspiracy.

Proof of two separate and independent conspiracies is not proof of the single overall conspiracy charged in the indictment. Thus, if you were to find based on the evidence in this case that defendant A conspired with defendant B and also that defendant A conspired with defendant C and that both conspiracies had the same unlawful objective, the Government would have failed to prove the existence of a single overall conspiracy and you must find the defendants not guilty of the conspiracy charge in Count 1.

The indictment charges a conspiracy starting on or about October 14, 1973 and terminating on July 18, 1974. The Government, however, is not required to prove that the

conspiracy existed over this entire period of time. If you find that for any measurable and substantial time during the above period the conspiracy charged existed, then that is sufficient.

If you determine beyond a reasonable doubt that there existed a conspiracy to bribe Public Officials of the United States as charged, you must then turn your attention to the second element of the offense and determine whether the defendant whose guilt you are considering, or whose case you are considering, rather, was a member of the conspiracy; whether he participated intentionally in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

In determining whether a particular defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy, what they were, and that they were unlawful?

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When I say "join the conspiracy," I don't mean that a defendant had to file an application for membership. Before one can be found to be a conspirator, however, he must knowingly join in the illegal venture. He must promote it or have a stake in its outcome. In the vernacular, he must be in on the scheme and in on the plan.

To find that a defendant was a member of the conspiracy, if any conspiracy exists, you must find that he knowingly and intentionally participated therein.

Knowledge is a matter of inference from facts proven. It is not necessary that a defendant be fully informed as to the details or the scope of the conspiracy in order to justify an inference of knowledge on his part. To have guilty knowledge, a defendant need not know the full extent of the conspiracy and all of its activities and actors.

Mere knowledge by a defendant of the existence of a conspiracy, or of any illegal act on the part of an alleged conspirator, or mere association with one or more conspirators is not sufficient to establish membership in a conspiracy. The Government must establish beyond a reasonable doubt that the defendant whose case you are considering was aware of the basic purposes and objects of the conspiracy and entered into it with a specific criminal

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intent, that is, with a purpose or intention to violate the law.

So, if a defendant, with an understanding of the unlawful character of the conspiracy, intentionally engages in actions or advises and assists for the purpose of furthering the illegal undertaking, he thereby becomes a knowing and wilful participant and a co-conspirator.

In determining whether any defendant was a member of the conspiracy, each is entitled to individual consideration of the proof respecting him, including any evidence of his knowledge or lack of knowledge, his status, his motive or lack of motive, his participation in key conversations and his participation in the plan, scheme or arrangements for the bribing of the INS investigators as alleged in this indictment.

Once you found the conspiracy to exist, and once you have found a particular defendant to have knowingly participated in it, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

If you find that a particular defendant is a

member of the conspiracy, then it is irrelevant to your consideration of his case that he may have joined the conspiracy at a later date than the other co-conspirators. As I instructed you previously, for you to find that a defendant joined the conspiracy, you must find that he adopted the plan and had a stake in its outcome. Therefore, when a conspirator joins a conspiracy at its later stages, he adopts as his own the acts of others in furtherance of their common unlawful objective.

In other words, it is not required that a person be a member of the conspiracy from its very start. He may join it at any point during its progress and be held responsible for all that has been done before he joined, and all that may be done thereafter during its existence, and while he remains a member.

Simply stated, using the partnership analogy again, by becoming a partner, he assumes all the liabilities of the partnership, including those that occurred before he became a member. Thus, if you find that a particular defendant was a conspirator, then however limited his role in furthering the objectives of the conspiracy, he is responsible for all that was done in furtherance thereof, before or during its continuance.

It is not required that all of the co-conspirators

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know each other well. They may not have even previously associated together. But, if you find they joined together to achieve an unlawful purpose, then they have become co-conspirators.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in the carrying out of the conspiracy. Hence, the acts or declaration of one in the course of the conspiracy in furtherance of the common purpose are deemed to be the acts of all, and each is responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed, and that the defendant whose case you are considering and other defendants were participants in it, then acts done and statements and declarations made in furtherance of the conspiracy by the other defendants found by you to have been members of the conspiracy may be considered by you against the defendant whose case you are considering and whom you find, based on his own acts, to be a member, even though such acts or declarations were made in his absence and without the knowledge of the defendant whose case you are then considering.

It is important to note that this principle applies only to the acts and declarations done or made during the

continuance of the conspiracy and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

Thus, if you find that a conspiracy existed, and that a particular defendant participated in it along with others, then you may consider the acts performed and the statements made by others to carry out the conspiracy as evidence against that defendant, even though he may not have been present at the time of the acts or declarations of the co-defendant.

If you find that there existed a conspiracy to bribe public officials of the United States as charged in this indictment, and that a defendant whose case you are considering was a member of it, you must then consider the third element of the offense, the requirement of an overt act. You may not find a defendant guilty unless and until you are convinced beyond a reasonable doubt that at least one overt act, as charged in the indictment, was committed by at least one of the conspirators within the Southern District of New York.

Now, I will read to you the overt acts.

1. On or about October 14, 1973, the defendant Benny Ong met with Investigators Granelli and Kibble in the

vicinity of Mott and Bayard Streets, New York, New York.

2. On or about November 15, 1973, the defendants Benny Ong and Wong Wah met with Investigators Granelli and Kibble in Columbus Park, New York, New York and gave Granelli and Kibble $400 in cash.

3. On or about January 17, 1974, the defendants Benny Ong and Tom Hom met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York.

4. On or about January 23, 1974, the defendants Benny Ong, Wong Wah and Tom Hom each met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York, and each defendant gave Granelli and Kibble $200 in cash.

5. On or about March 13, 1974, the defendants Benny Ong, Wong Wah and Tom Hom met with Investigators Granelli and Kibble at the Hong Gung Bar, 30 Pell Street, New York, New York, and each defendant gave Granelli and Kibble $200 in cash.

6. On or about April 11, 1974, the defendant Benny Ong met with Investigators Granelli and Kibble in the vicinity of Worth Street and Columbus Park, New York, New York, and gave them $200 in cash.

7. On or about May 8, 1974, the defendant Benny

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Ong met with Investigators Granelli and Kibble in an automobile in the vicinity of Columbus Park, New York, New York, and gave them $1,000 in cash.

8. On or about June 20, 1974, the defendant Benny Ong met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York, and gave them $600 in cash.

9. On or about June 26, 1974, the defendant Benny Ong met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York, and gave them $800 in cash.

10. On or about July 3, 1974, the defendant Benny Ong met with Investigators Granelli and Kibble in an automobile in front of 56 East Broadway, New York, New York, and gave them $800 in cash.

Those are the overt acts charged. The offense of conspiracy is complete when the unlawful agreement is made by two or more persons and any overt act is done by a conspirator -- in the language of the statute -- "to effect the object of the conspiracy." Hence, the overt act required is one which furthers the object or purpose of the conspiracy. It does not have to be in itself a criminal act or an act which constitutes an objective of the conspiracy. It may be an act which is innocent on its face, such as

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having a meeting, but it must be of such character that it furthers or promotes or aids and assists in accomplishing the purpose of the conspiracy.

It is not necessary for you to find that all of the alleged overt acts charged in the indictment were committed, nor is it necessary that an overt act implicates all of the defendants named in the indictment. It is enough if you find that at least one of the overt acts charged in the indictment was committed by at least one conspirator in furtherance of the conspiracy within the Southern District of New York, which includes, of course, New York County or the area commonly called Manhattan.

The purpose of requiring proof of an overt act is that while parties might conspire and agree to violate the law, after they reach that agreement they may change their minds and do nothing to carry it into effect, and if that happens it was only talk, and then no crime has been committed.

But here the statute requires that there must be proof beyond a reasonable doubt that after the agreement has come into existence at least one conspirator has committed at least one overt act in the District, or Southern District of New York.

Now, so much for the conspiracy.

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Now I will turn to the substantive counts. As discussed earlier, those counts, 2 through 99, charge those certain individual defendants named in each such count, on occasion aided and abetted by a co-defendant, violated the Federal Bribery Statute, that is, Title 18, United States Code, Section 201(b), which provides in pertinent part:

"Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any public official ... with intent, (1) to influence any official act; or (2) to influence such public official ... to commit or aid in committing, collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States; or (3) to induce such public official ... to do or omit to do any act in violation of his lawful duty," commits a crime.

Congress has made it a crime for anyone to directly or indirectly offer, or promise, or give money or other things of value to a public official with intent to influence his decision or conduct with respect to any matter then pending or which might be brought before him in his official capacity.

The clear purpose of this statute is to protect the public from the consequences of corruption in the public

service. It is a major concern of organized society that the community have the benefit of the objective evaluation and unbiased judgment on the part of those who participate in the making of official decisions or the conduct of government business.

The essence of the crime of bribery is that the will of an interested person is substituted for the judgment of a public official as the controlling factor in official decisions or official conduct.

The crime of bribery strikes at the very foundation of the administration of good government, and it is equally criminal, members of the jury, and Congress has made it so, insofar as the person who gives the bribe is concerned. He ranks no better, and his conduct is just as unlawful as the conduct of the corrupt and dishonest public official who takes money to permit people to control him in the performance of his important public functions.

In order to prove the bribery charged against defendants in Counts 2 through 99, the Government must prove the following elements beyond a reasonable doubt as to each defendant whose case you are considering with respect to the counts in which he is named:

First, that during the period alleged in the indictment, Lawrence V. Granelli and James E. Kibble were

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public officials of the United States, namely, criminal investigators of the Immigration & Naturalization Service;

Second, that the defendant or defendants named in the count of the indictment which you are considering directly or indirectly gave, offered or promised money to the investigators at the time and place alleged in that count of the indictment; and

Third, that the defendant or defendants in paying money to these investigators acted knowingly and wilfully and with the specific criminal intent to influence official acts or to induce said public officials to commit and aid in committing a fraud on the United States, or to induce said public officials to do or omit to do an act in violation of their lawful duties.

In other words, in order to find the defendants guilty of the crime of bribery charged in any substantive count, you must find that Investigators Granelli and Kibble were government employees acting in an official capacity, and further that the defendants paid money to them with the intent to influence their official acts or to induce them to commit or aid in committing a fraud on the United States or to induce them to do or omit to do acts in violation of their lawful duties.

As to the first element, you heard, from the

testimony of Granelli and Kibble, that at all times relevant to this case they were criminal investigators of the Immigration & Naturalization Service of the United States Department of Justice, and that they were assigned to Immigration operations in the so-called Chinatown vicinity of Manhattan. There is no contention to the contrary and this element should not pose any difficulty for you. If you find that Granelli and Kibble were employees of the Immigration & Naturalization Service, then they were public officials within the meaning of this statute.

Now, to establish the second element of the crime of bribery, the Government must prove beyond a reasonable doubt that the defendant whose case you are then considering directly or indirectly gave, offered or promised money on the date or occasion which you are considering to the investigators for himself or for another person or for another entity.

It is not necessary that the defendant did all of the acts just mentioned; it is sufficient if he did any one of them. For example, you may find this element satisfied if the Government proves to your statisfaction that a defendant simply offered money.

By use of the terms "directly or indirectly," it means that it is not necessary for the Government to

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establish that the defendant himself gave, offered or promised the money, providing he had so directed or aided or assisted someone else in doing so.

Furthermore, it is not necessary for the Government to prove that the defendant paid the exact sum alleged in the particular count of the indictment you are considering. It would be sufficient for purposes of the substantive counts if the Government proved beyond a reasonable doubt that the defendant gave, offered or promised any amount of money which was sufficient to be regarded by the party or parties offering it as something of value, namely, a bribe, intended to influence the man in the performance of his official actions.

The third element of the crime of bribery is that the defendant or defendants you are considering must give money or aid and abet the payment of money with the specific intent (1) to influence any official act; or (2) to influence the public official to commit or aid in the committing of a fraud; or (3) to induce the public official either to do or omit to do any act differently than required by his lawful duty. It is sufficient if you find beyond a reasonable doubt that the defendant whose case you are then considering intended any of the aforementioned three results.

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An official act means any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending or which may by law be brought before any public official, in his official capacity, or in his place of trust or province.

The term "fraud on the United States" means to deny the United States the right to have its business and affairs carried on honestly and impartially, free from fraud, improper and undue influence, dishonesty or unlawful impairment or obstruction. Therefore, the payment of money by a private person to an official of the Government for the performance of an official act or to prevent or change such performance constitutes a fraud.

I know it has been lengthy. Would you all like to get up and stretch a minute? Everybody who is uncomfortable sitting in these chairs. Counsel also. It won't be that much longer.

(Pause)

The Immigration & Naturalization Service is charged with the enforcement of the Immigration laws. The duty of Immigration officers include searching for and apprehending illegal aliens, and apprehending those persons who harbor illegal aliens knowingly in violation of the Immigration & Nationality Act.

The enforcement of the immigration and naturalization laws against illegal aliens in the country is an important part of federal policy established by Congress, and for purposes of this case it makes no difference whether you approve or disapprove of the immigration laws, or the ways in which they are enforced, or whether you consider they are unfairly enforced, or whether you believe that the law should be different.

The Congress of the United States makes these laws and it is the duty of the Immigration & Naturalization Service to enforce the laws which have an important public purpose, and you should put out of your minds any feelings that you may have about the nature of the immigration policies in this country at this time.

Even if you conclude that these laws are bad laws or that Congress should change them or that the head of the department should operate it differently, this would not justify the bribery of a public official.

In order to find the defendants guilty of the crime of bribery, it is not necessary for you to find that the officials involved were in fact influenced in their official acts. All that is required in order to make out this crime is that it was the intention of the defendants in paying the bribe to so influence them. In other words,

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a defendant can properly be found guilty of the crime of bribery regardless of what Granelli or Kibble were thinking or planning to do at the time of the payment in question.

Or, phrased somewhat differently, it is not necessary that the bribe was successful or that Granelli or Kibble were in fact induced or influenced. All that is necessary is that the defendant whose case you are considering knowingly and wilfully paid the money with the intent to influence and induce Granelli or Kibble to cause INS to cease conducting official area control search operations for illegal aliens at the site of the defendants' respective illegal gambling businesses, or to provide a defendant in advance with confidential information concerning such proposed search operations, or both.

In other words, the crime of bribery may be committed even though the official who was bribed is not corrupted or the object of the bribe could not be obtained.

You will recall that I have stated to you that one of the elements of any of these crimes is that the Government must prove beyond a reasonable doubt that the defendant whose case you are considering acted knowingly and wilfully.

Well, I direct your attention to these words, "knowingly" and "wilfully." The question is what do they

mean? First let me instruct you what they don't mean. They don't mean that the Government has to show that a defendant knew he was breaking a particular law before he can be convicted of a crime. The words also do not mean that the Government has to show that a defendant intended to profit at the expense of the Government or any other person, and they have nothing to do with the defendant's personal or private reasons for violating a statute.

For, if after considering all the evidence in accordance with my instructions to you, you come to the conclusion that a defendant has violated the law, then, in that event, his personal or private reasons for violating the statute are of no consequence so far as guilt is concerned.

Members of the jury, an act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident, mere negligence or some other innocent reason. An act is wilful if it is done knowingly and deliberately and with an evil motive or purpose. "Unlawfully" means contrary to law. Hence, to do an act unlawfully means to do something which is contrary to law.

In essence, then, the phrase "knowingly, wilfully and unlawfully," as I have used it, means in a voluntary, deliberate and intentional fashion.

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Knowledge and intent exist in the mind. It is not possible to look into somebody's mind, so the only way you have for arriving at a decision on these questions is to take into consideration the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the defendant whose case you are then considering had the required knowledge and the specific criminal intent at the time in question.

Direct proof is not necessary. Knowledge and intent, including the intention to induce a public official to violate his lawful duties, may be inferred from all the surrounding circumstances.

In order to find a defendant guilty of having violated the bribery statute, it is not necessary for the Government to show that a defendant actually offered or physically handed any money to a public official, or that he supplied any money for that purpose. A person who commits the acts which the bribery statute declares to be a crime, of course, commits a crime.

As I have told you, the bribery statute makes it a crime for anyone knowingly and wilfully to pay such money either directly or indirectly. It is also a crime not only to commit the illegal acts to which I have just

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referred, but to aid or abet or procure or induce another person to commit such an act.

Section 2 of Title 18 of the United States Code provides that a person who knowingly aids and abets another to commit a crime is just as guilty of that offense as if he committed it himself.

Accordingly, as to Counts 35 through 61, you may find the defendant Wong Wah guilty of the offense charged in those counts if you find beyond a reasonable doubt that the defendant Benny Ong paid money to Granelli or Kibble and that the defendant Wong Wah aided and abetted this payment.

Similarly, as to Counts 74 through 78, you may find the defendant Tom Hok guilty of the offense charged in those counts if you find beyond a reasonable doubt that the defendant Benny Ong paid money to Investigators Kibble and Granelli and that the defendant Tom Hok aided and abetted this payment.

While there is no precise rule as to what acts constitute aiding and abetting, it is enough that a defendant intentionally, knowingly and wilfully in some way associated himself with a criminal venture, that he participated in it as something which he wishes to bring about or, in other words, that he seeks by his actions to help

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make it succeed.

Now, a word about this expression "coercion," which has been used in some of the argument.

Defendants claim they had no purpose of offering or promising any money to any individual or Immigration & Naturalization employee, and that Investigators Granelli and Kibble demanded payments from them, and threatened to abuse their authority as criminal investigators of the INS to harass establishments which they operated unless payment as demanded was made.

The defendants claim that they were threatened with or subjected to successive, repressive and harassing disruptions of their businesses. They contend that the payments that they did make were in response to these threats and actions to prevent INS investigators from abusing their powers and to end this harassment.

Now, if you find that a government officer threatened a defendant with serious economic loss unless he was paid, you may consider this as evidence that the defendant did not have the required specific criminal intent, that is, that in making the payment charged, if he made it, the defendant was not knowingly and wilfully making the payment with the intention of having the public official violate his lawful duties, that is, to bribe him.

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But even if you find that there has been some measure of coercion, you must examine whether this coercion and extortion, or whatever it was, was so overpowering as to overcome the lawful intentions of these men.

In considering the sufficiency of this evidence, you should consider that the proper response to coercion by corrupt public officials is to go to the authorities, not to make the payoff.

Since the conspiracy charge and the bribery charges require that a defendant have this specific criminal intent to perform an unlawful action, namely, to bribe somebody, you must examine the state of mind which each defendant had on each occasion when he is charged with having made a payment or in having agreed with others to make a payment. You will, therefore, consider the state of mind of each defendant separately and consider his intentions and consider this question of coercion at each relevant time separately. It is possible you may find that at some stage during the time period covered by the proof in this case a particular defendant had a specific intent to make a bribe, and that perhaps at some other or different date the conduct of the government agents was such as to suggest to you that it was a shakedown rather than a bribe.

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The point I wish to make is that this matter of coercion is a separate issue, to be considered separately by you, concerning the activities of each defendant at each time or date on which the defendant is accused of the separate crime. And it is a factor to go into your consideration as to whether or not the Government has proved the specific criminal intent of a defendant whose case you are considering at that particular specific date or time.

During the course of this trial, you have heard reference to illegal gambling operations, harboring of illegal aliens or ship-jumpers, and dealings in narcotics by persons other than these defendants. The defendants are not charged in this indictment with any unlawful activity of that nature. In that regard, it is imperative that you disregard these references except as I instruct you in determining whether the defendants are guilty of the charges of this indictment.

The Government has contended that each defendant had a motive for violating the law which he is charged with violating, and that his motive was to protect his gambling operations from being subjected to searches for illegal aliens.

Proof of motive is not a necessary element of the

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crimes with which those defendants are charged. Proof of motive does not establish guilt, nor does want of proof of motive establish that a defendant is innocent. If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be or whether any motive be shown.

In instructing you that motive need not be shown, I caution you that the Government must demonstrate that the defendant whose case you are considering acted knowingly, wilfully and with the specific intent to violate the law which I have previously described.

There has also been some discussion during this trial of corrupt practices by law enforcement authorities in Chinatown. I caution you that it is no defense to the charges in this indictment that corruption is a way of life in any locality or among any segment of our society, if indeed that be so.

Except as I have previously instructed you concerning defendants' claim of economic coercion, it is not at all relevant what defendants believed about corruption generally if you find that they made the payments charged in this indictment and did so knowingly, wilfully and with the intent to induce officials of the Immigration & Naturalization Service to do or omit to do an act in

violation of their official duties.

Just a few more matters and I am coming very near the end.

Under your oath as jurors, you cannot allow the consideration of the sentence or the punishment which may be inflicted upon a defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine whether or not a defendant has been proved guilty beyond a reasonable doubt solely upon the basis of the evidence and the law.

You are to decide the case as to each count and each defendant upon the evidence, and the evidence alone, and you must not be influenced by any assumption or conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal.

But, on the other hand, if you should find that the law has been violated, as charged, by a defendant as to any count, you should not hesitate because of sympathy

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or any other reason to render a verdict of guilty as a clear warning that crimes of this character may not be committed with impunity. The public is entitled to be assured of this.

Now, on this subject of sympathy, you heard from some of the lawyers that there had been oppression and graft for at least twenty years by the New York City police against the gamblers in Chinatown, and also that the immigration enforcement had been oppressive in Chinatown in the past.

I know this country is not perfect. All of us, particularly the federal judges, as I am sure you all realize, are trying to wipe out and end and forbid prejudice or racism or unequal treatment. We believe, and I ask you to hold to it, that all men and women are equal before the law and are to be judged equally without regard to race, color, creed or past history of misgovernment.

If a defendant is not proven guilty beyond a reasonable doubt on any count, he must be acquitted as to that count. But if he is guilty, he should be found guilty even if he is entitled to sympathy because the city government or even the federal government was unfair in the past. Such past unfairness does not excuse breaking the law.

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Now, a word about deliberation. As I told you earlier, each juror is entitled to his or her own opinion. Each of you should exchange views with the other jurors and you should do so politely and take your time, express your opinion sincerely. That is the purpose of jury deliberations, to discuss and consider the evidence, to listen to the arguments of the fellow jurors, to present your own individual views about the case and consult with one another, and then to reach a verdict based solely and wholly on the evidence if you can do so without violence to your individual judgment.

But each one of you must decide this case for himself or herself after consideration with your fellow jurors. You should not hestitate to change an opinion which you may hold which, after discussion with your fellow jurors, appears erroneous in the light of the discussion viewed against the evidence and the law.

However, if, after carefully weighing all the evidence and listening to the arguments of your fellow jurors, you entertain a conscientious view that differs from the rest, you are not to yield your judgment simply because you are outnumbered or outweighed. Your final verdict must reflect your individual conscientious judgment as to how matters should be decided. In order to

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find a verdict on any count, it must be unanimous.

Now, in the course of your deliberations, you may desire to have some part of the testimony read to you, or you may want to send out a note for all the exhibits or for some exhibits or any particular exhibit that you would like. You may wish to have some or all of the tapes played for you. You may even find that you are uncertain as to the meaning of some part of the Court's instructions.

Now, in any such case, you may send out a note to the Court through your foreman asking for whatever will clear up any of the questions you may have.

Now, as you recall, we spent a considerable amount of time listening to these tapes and to hearing this testimony, so before you request anything to be played or read back to you, I would like you to discuss and see if you have exhausted your collective memory, but if any of you need to hear any part of it again, either testimony or tapes, send out the note, and please be as specific in the note as you can, and if you ask for a copy of the indictment by a note, that will be sent in to you.

And, as I said earlier, an indictment is merely an accusation or charge and it has no status as evidence.

If you ask for the transcripts, you may have those. If anyone wants the transcripts that he or she

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has made notes on, you may have those. But I caution you that the tapes are the best evidence, and if you have any problem as to the accuracy of the transcripts, don't rely on them, insist that the tapes be played for you again.

The transcripts are only an aid to help you in listening to the tapes, or if you look at them during your deliberations, you may use them only to help you remind yourselves of what you have heard. They are not the best evidence of what is on the tapes.

Mr. Carrier will be the foreman and he will send out any notes, and if the jury has reached a verdict, please tell the marshal that the jury has reached a verdict.

Now, also, in those notes kindly do not indicate how the jury is then divided. That I do not want to know, unless the jury is unanimous as to its verdict.

Now, one or two last words. You all know what your oath requires of you, and that is that without fear or favor to anyone you will well and truly try the issues between each defendant and the Government of the United States, based solely on the evidence and following the Court's instructions as to the law. It is important to each defendant, it is important to the Government, and it is important to you.

Now, will the clerk swear the marshal.

Transcription of a recorded conversation between BENNY ONG, WONG WAH, TOM WOK and Immigration and Naturalization Service Investigators LAWRENCE GRANELLI and JAMES KIBBLE; recorded on January 23, 1974, at approximately 3:50 PM, at the Wong Gung Bar, 30 Pell Street, Chinatown, New York City.

ONG (talking to unidentified person)	Your son say - "What do you want?"
GRANELLI (G):	Hi ya BENNY!
ONG (O)	Hello.
UM	Yeah_____Get it.
KIBBLE (K)	LARRY - go ahead - sit down. Thank you.
O	Okay.
O	I told them - told them two new - two guy - I said 4 o' clock. The one on East Broadway.
G	Yeah, WONG?
O	What's that guy - (inaudible)... TOM.....
G	TOM, yeah.
K	TOM....
O	TOM WOK (phonetic).
K	You just gave me something. What was it?
O	Two - I give you that - I gonna give you my own -
G	Oh - okay.

D1

K — Okay.

G — Happy New Year BENNY. I didn't even wish you a Happy New Year.

O — Thank you. Yeah, thank you, thank you, thank you, thank you.

G — Jesus! Boy, everybody's on the street!

O — Ah - TOM HOK (phonetic) come in. I tell him, I said 4 o'clock you be here. He say "okay" - He's upstairs, you know. He live upstairs.

G — He lives upstairs here?

O — He live with that guywe talk - talk to him the other night. The one - the one on Mott Street.

K — Mr. TOM?
The guy that went_____

O — Yeah.

G — Yeah.

K — Yeah, the boss liked his offer?

O — Yeah.

G — Hey BENNY, what happened at 57 Mott Street? FRANK's barber shop.

O — Ah----

G	They took a pound of stuff out of there.
O	Took two pounds.
G	Two pounds? Whew!
O	That's right - That FRANK got all that stuff there.
G	It was FRANK's?
O	The co-owner of this place.
G	Who's that?
O	FRANK!
G	Oh yeah, right. He's stupid. What's he doin leavin' it in the barber shop?
O	More easy to get'em out.
G	Oh, its easier to get it out of there?
O	Hide'em up there.
G	Hides it?
O	Hides in all the pipe.
K	In the pipes?
O	The sink.
K	Whew!
O	Under the sink.

K — Two pounds! He took a beating!

O — Quite a few dollar. A lot of money's in there.

K — How much? About?

O — About 20,000.

K — 20,000? Whew!

O — May be more. Two pounds - Its the real stuff.

G — What's it, #4? Is it white or was it brown rock?

O — White. That's what they said - I don't know. To me - to me - don't know nothin' on those things. (Laughs)

Yeah - that's true - don't do that no more.

O — Oh! Oh yeah. You know who I saw today? - Who I see today?

K — Who?

O — ROWLAND.

K — Oh yeah.

G — Yeah. He was goin' to a meeting.

O — Oh. Huh?

G He's supposed to go to a meeting.

O Yeah?

G Chinese Cosolidated Benevolent Association.

O Yeah, yeah. I see him in the street. He come runnin' over there - Hey BEN, Happy New Year, you know. I say "What are you doin' round here" - I say "there's no alien around here" (laughs).

G I saw him this morning. I saw him before -

O What he want?

G He was all dressed up.

O Yeah.

G Suit on. (Pause)

G So what did FRANK say about the stuff? Took some beating huh?

O (Inaudible)

K He'll make it back.

O I don't even know - I don't even ~~know he had that~~ stuff - I know, but that's not ~~my~~ business. He's a bad - he's a blabby mouth anyway - his mouth is - bip-bip-bip-bip-bip. After he drink a couple - after he get a couple a drink - he tell you everything.

D5

K — Yeah?

G — We drank with him a couple of times - he seemed like he never says nothing. You know - bad - He don't - ah -

O — Sometime he spoke too much. He tell you everything.

K — So how's business? Good?

O — Business - we didn't open. We closed.

K — Why?

O — We close today, New Year. Open tonight.

G — They didn't send anybody down Mott Street because of the holiday too.

O — Yeah, I know that.

G — They stay away on New Years you know - to respect the holiday.

O — I go call a them again.

K — Oh no - take it - they'll come. You said 4 o'clock, right? Its only ten to now.

O — You see, I don't get much time. I gotta - gotta go back to open - open the gambling house.

D6

K — Oh.

G — You're going to open the gambling house now?

O — See - ah - you take care. You two take care. Don't worry about that - nothin' happen. No trouble nothin'. See? When I say anything to them guys, you don't have to worry about it. When you talk to them yourself, just be careful. You know that?

G — When we talk to them?

O — I mean - ah - any guy your when you talk to them - you know - you be careful - you understand what I mean?

K — To who?

O — You know - To anybody - anybody who -

K — Oh, anybody - anybody that comes yeah, right.

O — When I -

K — Well, what about -

O — When I tell'em, you know, he wouldn't say nothin'. He wouldn't - he wouldn't squauk because when I say something they wouldn't - here they come - they wouldn't say nothin'. See. You understand what I mean?

G	Yeah.
O	You talk to him personally - okay?
G	Okay, thanks.
O	I get out - you know - I get out - you talk to him. Alright?
G	Okay.
K	Hello TOM! How ya doin?
G	Hello TOM.
TOM (T)	(In Chinese) (inaudible) (English) Yeah.
O	Okay?
T	Okay.
G	Happy New Year TOM -
O	Okay.
T	Same to you - same to you - same to you - waiting long?
O	See you gentlemen -
K	Yeah - take it easy BENNY.
G	Bye BENNY, see you later BENNY - How about a cup of tea or a drink TOM?

T No - I drink to much in these few days.

K There s tea right here - Want some?

T Just some tea - thank you.

G We - ah - we talked to th boss, TOM.

T Yeah -

G Told him about your offer.

T Ah huh.

G He says everything will be okay -

T Yes -

G He just - ah - he was a little upset because you went out and tried to give those guys money - and you didn't even know who they are - and -

T Yeah.

G He says you gotta be careful - you can't just go ah - go up to people in the street - Immigration people in the street and start giving them money.

T No - I never do that before -

G Never did it before that?

T — No - (laughs)

G — Why'd you try it that time? (laughs)

T — (laughs) Oh - I see the young guy - that was there - what his name -

G — BOB.

T — He know me - he know me at the 68 -

K — Oh he's seen you there.

G — 68 - oh - he's

T — Many times - you know

K — You know he's honest -

T — (laughs) So how much? - how much did you boss say - two - right? Two - huh?

G — Well that's what you asked us last week - you said two -

K — You wanted the same deal as BENNY -

T — Have to pay you now.

K — When you came over last Thursday -

T — Yeah - how can I pay you next week? Same place? - Same place? - Same place?

G Yeah - fine -

K Yeah - if you wanna come with BENNY or something.

T No - its up to you -

K No problem - BENNY -

T Same place -

K BENNY - BENNY - when BENNY came to us - he said - I'll see you every Wednesday - so he comes in - on Wednesday - him and WONG - you know WONG?

T WONG?

K WONG WAH -

T Know too many WONG - I don't know which one -

G WONG WAH - 58 -

T Mott Street?

G East Broadway - Tai Look -

T Oh - oh - oh Tai Look.

G Secretary - at the Tai Look.

T Humm-

K Sometimes BE NY rings his - sometimes WONG doesn't come -

T Humm-

G It's up to you TOM - it's up to you.

T Let me see -

K Just don't go walking up to anybody else again -

G Yeah right.

T I know that.

K Otherewise we're going to get caught.

T Yes - right - how 'bout Monday? Oh no -- okay - same time - same place - be alright in here.

G Here?

T Yeah.

G If it alright with you - whatever you want.

T 4 o'clock - on a Wednesday.

G 4 o'clock on Wednesday?

T Yeah - yeah - alright?

G Okay -

T See you then -

D12

K — If you can't make it just see BENNY.

T — Yeah -

K — So how's business?

T — Not so good.

K — No?

T — The place new -

G — New?

T — Yeah - the place new - new - the other place not easy now (laughs) got too many (laughs)

K — You closed because of the New Year -?

T — No.

K — No - you open tonight?

T — Oh - ah you know - because a before - I - I was in charge in a 68-

K — Yeah -

T — There was three tables - but now - I move over and in charge of the - ah - 61.

K — Yeah - BENNY was saying they - they caught some people up on Mott Street last night - we saw it in the paper -

T — Humm-

G — Up in the barber shop.

K — FRANK's barber shop.

T — Oh - not last night - before last night -

K — We saw it in the paper.

T — Yeah - before last night.

K — BENNY told us about it -

T — You know - the guy's stupid.

G — Yeah.

T — Yeah - very stupid.

K — Stupid to get caught.

All laugh.

G — Here's WONG -

T — Yeah okay - anyway -

K — Okay.

T — Same place - same time.

G — Same place - same time? Alright TOM - thanks alot.

WONG (W) — Hi there - hi ya - thank you -

G	Hello WONG -
K	Happy New Year - how you doin'?
G	Happy New Year WONG -
W	Okay - same to you -
K	Thanks WONG
W	How's everything?
G	Okay - how are you doin'?
W	Oh you know - ah - its very quiet - you know - ah they ah - stop at my club because nobody - ah - you know ah very quiet - you know - there's only a few hours - they start at 2 o'clock - until - 5 o'clock just a few hours -
K	You opening tonight?
W	No.
K	No?
W	No very quiet
K	BENNY was here - he said he had to go
W	Huh?
K	BENNY was here - before - and he said he had to go - he left - he left at 10 to 4.

D15

W — Oh yeah - What time we come down over here you know - because - busy you know but - not ah - gamble over there - very few -

K — He brought Mr. - Mr. TOM - the man that was just here -

W — Yeah.

K — He brought Mr. TOM to us on Thursday night - and he asked us if Mr. TOM could do the same thing - same deal - and ah - we had to speak to the boss - the boss said okay -

W — You wanna come tonight? You wanna -

K — He said that's 61 Mott -

W — He came up with JIMMY, right?

K — No - no that's - you mean JIMMY ENG?

W — Yeah.

K — No - his ah - I - I only know him as Mr. TOM -

G — He opened 6 - he just opened 61 -

W — 61? 61?

G — Yeah - he opened it last week.

D16

W — You talk to him already?

K — Yeah - he almost got us in trouble -

W — (inaudible)

K — You know what happened?

W — I don't know.

K — Last Thursday he came up to two guys in the street and said, I want to give you money - I want to give you money so the two guys they were going to arrest him for bribery - They called the boss and the boss told us to go down and see BENNY - Because he said "I know BENNY - you guys know BENNY right" and these guys don't know BENNY - so ah - we went down and told BENNY hey you gotta stop this guy from just going up the street and asking someone.

W — (Laughs)

K — And then we were in here and BENNY brought him around and asked us if he would - if he'd give us the same deal as he had.

W — Yeah, I knew that.

K — The boss said okay.

W — Make it quiet right in Chinatown (laugh). What about the rest of them?

K — Don't know (pause)

W — (Inaudible) I think they still want - I think still wanna play the game you know. (laughs)

K — How's ALBERT?

W — I don't know - ALBERT - I don't, don't even talk to him - I don't like him - I don't talk to him - I don't talk to him - I was at the thing last night, ah with a friend of mine -

W — You know ah last night and ah - a smoke?

G — No thanks.

K — No. Want some tea?

W — No thank you, I don't want, I just want - you know - I was standing over there - you know ah a jet - what is it by the corner Wall Street over there. They play a couple game there - make it a Happy New Year - ah - I do it myself thank you - you know I wanna make it a happy new year. You know - ah - I don't like it because ah - you know - ah you try to match the one - who you smoke light up to you - scare it and light my thing - see I don't like it.

K — No.

W — No I don't like it, I - just throw it away.

G — Bad Luck?

W — I make another one, light up another one - ah you know ah I supposed to be you know you heard about it. I was in the Korean War in a Korea.

K — Oh yeah?

W — I was down there you know - ah - if one used - one used to try and light - re - you know - it's like I say -

W — The man with weapon not in - in the hill is called a ... Gen Russell_____ Gen Russell. Well or something like you know.

G — What is his name?

W — General Russell

K — General Russell?

W — Russell yeah.

G — General Russell?

W — Yeah - General Russell - he went down there you know - Taiwan. That guy he was smokin' - you know drinking and you know on duty you know that - so ah they smoke like this with the helmet liner they take it off - helmet liner you know that.

K Yeah.

W They cover it up the light don't come out you know - nightime.

G You can see'em.

W Yeah you can see em you know.

G Sure.

W Yeah.

G The snipers will get'em.

W Yeah the second one be get a shot.

G That's right.

W See - I don't like it.

G They used to say the third one.

W You know ah -

G By the time they got to the third guy, the sniper would have him in his sights.

W You gotta light up like this - you take a the helmet liner you know what and I take it off - the helmet liner - cover it right up just like this one - the third one is no good -

G Yeah.

W He get shot like that.

D20

G — Yeah.

W — So I don't like it - I just throw it - I make another one - (laughs) you believe it or not?

G — Yeah - I believe it -

K — Oh - I've heard that before -

W — Huh?

K — Three on a match.

W — Yeah - so I don't like it - and that even two I don't do - I don't wanna do - ah - two - I was one year down there - in that place (inaudible)

G — You want a drink or something WONG?

W — I don't want a drink -

G — A little tea.

W — No - you wanna eat something -

G — No - thank you - I don't want anything.

K — No.

W — Don't want anything?

G — No.

WAITER — Two more beers?

G — Yes - please -

W (Inaudible) you know - wanna give me a bill - you know - wanna do me a favor -

W You know - I wanna -

K It's up to him - I don't know.

G What?

W You wanna eat something? Hey Chinese new year (laugh).

G Alright - I'll have something to eat - I'll have something to eat later - alright - maybe later - not now -

K Yeah - we'll come down.

W I ah - another -

G Another time WONG - alright - thank you, I appreciate it -

W It's Chinese New Year you know - you want another time? Another time it up to you - you know -

K Yeah - cause - we - we ah - ate before - and this way - you know - we'll eat later maybe we'll see you later -

W I don't know - maybe -

K Thanks - thanks anyway - WONG - we appreciate it.

W Sometime next week - alright?

G Alright - thanks WONG -

K Good.

G We'll stop by .....can we eat over there? On East Broadway.

W Where?

G On East Broadway?

W Got no place over there.

G Oh?

W No restaurant place you know that - We'll eat in Chinatown.

G Well here's to the New Year. (toast drinks)

W And the same to you. Thank you.

K Happy New Year ---- Lot of noise out on that street huh?

W Yeah - they wastin' the money you know.

G Did you hear about 57 Mott?

W 57?

G FRANK's barber shop?

W 57 Mott Street? Yeah?

K — (inaudible) ....it was in the paper.

W — When?

G — They got two pounds outa the place.

W — Yeah?

G — Two pounds of the white stuff.

W — (Laughs) When?

G — Cops. Maybe two days ago.

W — Two days ago? (Inaudible)

K — DENNY told us FRANKS stupid.

W — (Laughs' that's the trouble you know - not careful down there... Will you know ah the people wanna make easy way you know easy money you know...(laughs)

K — Hey - nothing wrong with easy money.

W — I know nothing wrong but-- but lotta people..you got two feet right? One foot put in the bank - one foot put in the jail you know.

G — (Laughs)

W — Either way you take it... Either way you take it you know.

K — You just gotta be careful.

W — If your lucky you know - you gotta you gotta put in the bank you know.

G — Put it in the bank.

W — Yeah.

G — (Laughs)

W — One foot step in the bank one foot step in the jail (laughs). They're crazy - you know -

BARMAID — Hi Happy New Year to you.

G — Happy New Year to you too.

K — Hello Happy New Year.

BARMAID — (In Chinese) A letter? (Pause)

W — They told you only sixty one. The rest of them they don't want to do it..? So how come? They got more - plenty over these days one - two - one two three four five maybe six over there.

G — They've got six gambling houses up there?

W — Yeah isn't that right? I don't know, I don't even - no.

G What is it 68?

K There's about 7.

G 68A.

W 67.

K 79 - 65 - 63 - 61 - 59. Whew' 72 Bayard - The new place, 72 Bayard.

W Yeah - you got nothing to do down there?

K No we haven't gone to the place - it just opened - but we heard there's a lot of seaman a lot of seamen over there.

W How long you go down ah - do you go down at ah to ah Division Street -- ah what you call it ah Foo Chow?

G Not yet.

K Foo Joy.

W Foo Joy?

G Not yet maybe next week.

W Yeah?

G Yeah.

K BENNY asked us about that.

D26

W — You know I thought you I thought you went down already you know, (inaudible)

K — Not yet.

G — Yeah.

W — They got plenty of people down there in the 2nd Floor right?

G — Yeah second floor - maybe next week.

W — Ah maybe you know some of the member you know - ah - ah - you know - he's not a member - you can't get in over there - because they can't come in - get in - like that - second floor - from - from the kitchen - you know - they - (laugh) - when are they planning it?

K — I think they're gonna hit it with the cops -

G — Yeah.

W — Yeah?

K — I think the cops you know - FRANK and PETE - the cops we're gonna hit it with them - we're all gonna go up at one time - get all the seamen - you know.

W — But they got - ah - they got eight guys - get in a from ah - get in from a the - the restaurant in front - they get in over there - they ain't gonna open the door over there.

K — That's the only way you can get in - though - right -

W — I don't know.

G — Maybe through the hall - I think you can go up through the hall -

W — Yeah - go in the hall - yes - no thank you -

BARMAID — (In Chinese) Yeah, do you want anything to drink?

W — No - thank you - you want a - want - one more drink - on me put it on me - put in on me - next week - I don't - like to - like to take you for dinner - this time its only beer -

G — Okay -

W — (inaudible) the - the - you know - ah the heavy one -

K — We should be buying you a drink - for your New Year - how bout a drink come on - you gonna have a drink with us?

W — No - thank you - too early -

K — Too early?

W — Yes - I can't drink too early.

K — Okay.

W — You know I'll be drunk - you know intoxication - you know. (Laughs).

W — I just got no place to go - you know - I take a little time - you know and then I go back.

K — You don't care if we get drunk - right? You don't wanna get drunk.

W — You don't do nothing - you know - today is Chinese New Year - you don't wanna do nothing - right?

K — We'll be down here drinking later on - come in here -

W — Chinese New Year - got a - crowd a people how you gonna do it?

K — Yeah - that's why the boss called everyone off - he just said no -

W — I understand - I thought you joined the parade - you know - Chinese New Year - what the hell - whats the - whats the difference? (All laugh)

K — We, were gonna drive the car down the street but ah -

W — I think a - I think they got parades - I don't know - I think they got parades - not tonight - maybe in a sometime you know - ah - I mean ah - sometime they supposed to get in the parade - you know - I don't a join it - I didn't join it - you know (laughs). Community_____. Are you sure you are not hungry - are you two gentlemen?

K — It's up to you.

G — If you wanta eat something, eat.

W — You, wanta eat something before I go?

K — You're temptin' me.

W — (Laughs)

K — No, we're good. We're good.

G — I just ate before.

K — Next time - next week.

W — Okay, next week. All right. Next week, next week, next week, on Monday, on Monday.

K — Thanks anyway.

W — Your welcome. It's my pleasure you know.

G — Thank you.

W — Chinese New year - you know - I mean ah - you know ah ah its the man livin' in a war. The money is nothing. You know ah the guy who was that have ah - ah a lot of money you know and a rich kid and ah if he die, only you own a few thousand dollar casket you know ah - it don't mean nothin'! (inaudible)

W — One more drink? From the bar?

G — All right, I'll have another beer.

W — Yeah.

K — We'll split a beer, I don't want another one.

W — What do you mean split one, just take - ah - five minutes. (In Chinese) Bring two beers over here!

BARMAID — (In Chinese) two beers over here.

W — How's the seamen? - you catchin' - ah - many - many seamen more?

K — We have not caught anybody in a couple of --- couple of days.

W — Couple weeks.

K — No - couple of days.

W — Couple of days.

K — Couple of days, cause we haven't been down here, we haven't caught any seamen.

W — No.

K — The boss didn't want any - did not want to ruin the New Year.

W — Oh - thank you (laughs)

K — (Waiter brings drinks) Thank you - so you haven't seen my friend ALBERT hun?

W — I see him once in a while but - ah - I didn't talk to him, I don't like'em. I mean it. You know - ah - he's ah too fresh - you know - sometime you know this way, I don't like it. I never talk to him, - Well I think I gotta go. You want another - one more drink?

K — No.

G — No, thank you WONG. Thanks a lot.

K — We're fine.

W — Okay.

K — Yeah.

G — Yeah.

W — (Inaudible) I'll see you later.

K — Again, Happy New Year.

W — Same to you - thank you.

K — Thank's for everything.

G — Thanks a lot WONG. Take it easy.

W — I put a tip already.

D33

NY 58-1875

Transcription of a recorded conversation between TOM HOK, PENNY ONG, WONG WAH and Immigration and Naturalization Service Investigators LAWRENCE GRANELLI and JAMES KIBBLE; recorded on February 6, 1974; at approximately 2:00 PM, at the Hong Gung Bar, 30 Pell Street, Chinatown, New York City.

KIBBLE (K)
UNIDENTIFIED MALE (UM)
GRANELLI (G)
ONG (O)
WONG (W)
TOM (T)

K	Hi ya. 2 o'clock.
UM	Hey hello, how are you?
K	Hello WONG.
G	Hello WONG, how are you?
G	Hi DENNY.
O	Hello, how are you?
G	How you doin?
O	How do you do?
K	Hello PENNY, how you doin?
O	(Inaudible) right?
G	Hi ya WONG.
W	Okay.
G	It's four hundred?
O	Yeah.
G	Ok-Thanks.

O — I think they come over - doing now-eh-on Division someplace - and they gonna be-different place - on Division Street.

G — Right (inaudible)

O — See but he didn't open may-be two weeks. I'm tellin you, he open one day-he give you-if he didn't open-he don't pay nothing - okay?

G — Alright.

W — I'll let you know about it.

K — Okay - okay.

W — I open one day, I give it to you - see - because - you know - you know - I have - ah - ah - you know-we close up - (inaudible)

O — (Inaudible)

G — No - not yet.

W — No people don't come around - they scared you know.

K — Yeah.

W — I'll let you know. Don't go up there again - see-you know - if ah the people you - you know - ah don't come around - they scared-you know.

K	Okay - we won't go there.
O	No - if he open - you know about it - he wouldn't lie
W	If I open up.
K	Oh - we're - we're not worried.
O	I wouldn't lie.
K	We're not worried WONG
O	I wouldn't lie with him
G	We're gonna - maybe next week, hit Division Street - the Foo Joy.
O	Foo Joy!
G	Do it with the cops.
O (in Chinese)	You do it with the cop. They will go to the Foo Joy to arrest the Foo Chow people. (in Chinese) Will I be arrested too? Possibly I will (Inaudible).
W	Will a Chinese person go with them?
O (in Chinese)	Everyone has been checked (inaudible) let them check the restaurant - Don't tell anyone about this.

W (in Chinese)	Yeah.
O	Second floor. (In Chinese) Oh yeah!
W	Second floor.
G	Their working on it now?
W	Yeah.
G	We just passed by there.
W	Yeah on the second floor.
G	Next door to the - to the Chemist.
O	Yeah.
G	To the drug store?
O	Yeah
G	Okay.
W	We don't know when we're gonna start it you know - I don't know.
O	How many - how many -
W	They still fix up the place. You know.
O	How many people you got yesterday?
W	I don't know.
K	Yeah.

O Last night, New York and ah KWUN LEE (ph)

G Oh about five aliens - five ship jumpers - I think there were five (inaudible)

K Yeah - 68 -'n- 70 - 79.

O 68 - New York.

W 68, yeah, New York.

O 79, there's ah - KWUN LEE.

W Nah - nah - nah 79

O 79 KWUN LEE.

G Bayard closed up, huh? 72 Bayard?

W They (laughs) cheat him. They cheat on each other.

G Yeah? I thought that was JOHNNY's Place - down at the Jade Chalet.

O Nah. LEE SOO (ph)

G Oh - LEE LOUIE.

O LEE LOUIE - Yeah - he's the guy you should catch. He get a lot of that white stuff.

G	He's always stoned - smoking.
O	Yeah, drink - What he don't use-he sell 'em.
G	Hey you know anybody that's got ah - we've got a lot of dough saved up.
O	Yeah? Why?
G	We could do - maybe - maybe a key.
O (in Chinese)	He - he - he said he has heroin. if anyone wants it, one kilo - two pounds.
W	(Laughs)
G	Maybe a kev.
O	Too much money (laughs)
G	Why? How much do they want?
O (in Chinese)	Two pounds - how much is for each pound.
W	I don't know.
G	It's not more than 10 a pound - is it?
O	Ten pound - nah.
G	No, ten thousand a pound.

W		I never saw it before (laughs)
O	(in Chinese)	He says ten thousand per pound.
W		That's a lot of money.
O		I don't think you gonna get that much today. Nobody - how you gonna delivery? (laughs)
K		We're going to go up to Connecticut.
O		Hah?
K		We're going up to Hartford again.
O		Yeah.
G		If you hear anything - let me know. Alright?
O		Be careful.
G		Well, I know, you got to be careful around China-town especially.
O		Yeah, Chinatown.
G		Too much bullshit.
O		Chinatown don't tell anybody-trust me-like-ah-
K		Here comes Mr. TOM.

O	KENNY?
K	TOM.
O	Yeah it's alright. Don't say nothing!
K	Hello there. Hello Mr. TOM.
W	How you doin? (all laugh)
O (in Chinese)	How are you?
TOM (T)	What happened?
K	Thank you. How you doin?
O	Oh - thank you.
T (in Chinese)	You mean wait and see until...(not clear)
K	Pull up a chair.
T	That's alright.
K	Oh - you gonna leave?
T (in Chinese)	Nothing happened right?
O (in Chinese)	No.
T (in Chinese)	Wait for a while - he will leave.
O	Yeah - okay.
K	Okay.

O	Don't say nothing to him.
K	Oh no - don't worry.
O	You can trust him. If he get - he get a buyer he could get rid of it - but - I don't think so. He wouldn't trust nobody.
K	If you hear of anything let us know cause we wanna - we're gonna go up to ah -
O (in Chinese)	He said if you can find someone who can take one pound.
W (in Chinese)	(Laughs) I don't know people.
O (in Chinese)	Don't do this kind of thing for him. It is very risky. You should not accept this offer. It will only invite trouble for yourself.
K	We've got enough for a key now. Between the two of us.
W	You know - ah - you been - you been - ah- Chinese quarter?
G	We don't go in there.
W	Be careful down there.
G	Well - I don't go up there.

W	Well - I-I just let you know about it.
O (in Chinese)	(Inaudible)
W (in Chinese)	Also the bad thing is that there may be informers there.
O	Don't ever go into that - that - ah - Night club and say anything like that.
K	Oh no. We only say it to you.
G	Not to anybody - but you. That's it.
O	No those people - you know - ah -
W	Don't go over there.
O	You know they - they plannin' over there - see they use that place, they plan something.
W	I heard about it.
O	If he talk like (inaudible) - guy say yeah - He said - ah - so got some Agent or something.
G	They set you up.
K	Oh yeah.
W	Don't go over there, okay?

O If you don't trust the guy - don't do anything.

K Well - that's why we talk to you.

O You see I-I afraid those things I-I tell you the truth, too old (laughs) I don't want to get involved.

W You know, we don't wanna take our money.

K Well if you know someone that you can trust, that's alright.

O Can't get rid of it right away, you know-that's the trouble. See if -

K If we - we're gonna - we're going up to Hartford again.

O If I get it to him, then, he don't give me no money. You understand what I mean?

G We - no we - we would give you the money, but we just - we ain't got enough - ah you know, 10 pounds or something - we just want a small amount - this is for us. The boss don't know. If you ever meet the boss, don't say anything.

O Um.

G You know, he - he don't mind the gambling but he's not too crazy about - ah -

O This thing.

G Yeah.

O This thing involved.

G It's a little different.

O Don't ever use that. If you ever do this, your dead duck!

K No.

G No.

O What's the matter - you don't want something to eat?

G No.

K No.

G Thank you.

O My boil - steam - some woman you know put them way up. Blown up everything. I'll fix the boiler down here now.

K Oh, the boiler.

O Three day - three night. I ain't get no - see - my nose.

G Got a cold now.

O — All of my grandsons sleep with coat on, blanket on. I woke him up. I-I-I think - I - think he move over to Division Street this weekend.

O (in Chinese) — (Inaudible)

W (in Chinese) — (Inaudible) (English) Night time very quiet.

O (in Chinese) — The other day I went up to the Legion. I saw some fellows who came from San Francisco. I stared at them - and they stared at me. They left quickly. Those collectors such as AH NGAU was also there. A few of them were fakers and the other few were real "port travelers" - once they saw me - I shook my head and said to them "you mother fucker", then two place hit - and each won about forty dollars - then they left - then (inaudible name) asked me, "Hey uncle why are you still here - I said, "you know and I know" - he said "watch your life" (inaudible)

W (in Chinese) — (Inaudible)

O (in Chinese) — I watched the dominoes playing (inaudible).

K — How's business?

O — No good.

K — No?

O — No - during the winter time - no good.

W — Don't ask me - don't ask me my place - close up down there (laughs)

O — I heard New York pretty good.

K — The - ah - other fellows went there.

O — Huh - the other fellow?

K — They got-five guys I think. Three the other night.

O — Two - two night, two night ago - Tuesday, Wednesday -

K — Yeah.

G — Yeah. Monday and Tuesday.

K — Monday and Tuesday I think they went.

O — Yeah.

K — It was -

O (in Chinese) — Somebody said Monday and Tuesday will be New York Club's birthday - (English) Nobody talked to your guy?

G — You mean from Mott Street?

K	We haven't been down there.
O	You know you keep hittin and they don't care. How come?
G	I don't know.
K	We don't go down there.
G	It don't matter, the boss is going to send them - send them back. Send the boys down there. We been going down there over over a year now - year and a half. It doesn't matter. As long as they don't hit your place. (laughs)
O	We don't care as long as they dont' hit us.
K	They catch 'em in 79 every time.
O	79?
K	Always catch 'em in 79.
O (in Chinese)	(Inaudible)
W (in Chinese)	WAH LAI (ph)
O (in Chinese)	CHIN KUO-KUN (ph)?
W (in Chinese)	WAH LAI.
O (in Chinese)	WAH LAI. LEE WAH.

G LEE WAH (ph).

O LEE WAH.

K LEE WAH.

W 79?

G Yeah.

O LEE WAH.

W LEE WAH.

O LEE WAH - this guy over there.

G No more.

K FRANK, no.

G He sold it out. Got out. That's what he told us. Told us last week - said he got out of that business.

O See - he get out of it. He involved in a lot of thing. I tell 'em (inaudible) get smart. He's a member of the Hip Sing.

G Yeah. The Hip Sing is a powerful big group, isn't it?

O (Inaudible) they're all the same like that. They just got a little money, that's all.

G A little? (laughs)

O (laughs

G How much - how much money does the Hip Sing make? How much money do you think?

O Property - couple of million.

G Couple of million bucks?

O Property.

K Oh in property.

O Since I am - I am an office job - I make a lot of money for them. (in Chinese) Once I worked for them as an officer, Hip Sing bought several buildings.

G Your brother is the President isn't he?

O No. He supposed to be a officer - he retired. My brother's sick.

G He's sick now? Yeah?

O Got Cancer in the lung, take a take a piece out of 'em like a grapefruit -

G Whew!

O But he survived.

G Yeah?

O Year and a half now. He's still alive. Money - money talk.

W (Laughs)

G He's got the best doctors, huh?

O Yeah. Two hundred and fifty dollars a day - a room.

K Oh in the hospital?

O But ah he's out. He's 76 years - 77-77 years old now. He's old. (In Chinese) 70 or so years old. My older brother.

W (in Chinese) 70 or so, huh?

O Hey - I gotta go.

W Okay.

O You take it easy.

W Okay.

K Okay PENNY.

W We'll see you then. Any news, I'll let you know, about it okay?

O Yeah.

W (Inaudible)

K Oh - yeah - well.

W	(Inaudible) get in touch.
K	Yeah - if you close?
W	Yeah. (Inaudible) - you you wanna check for me?
K	No - we believe you.
O	Okay - yeah.
W	You know - we we - we - move over here - I don't know when we gonna start it you know - I'll let you know then. (Inaudible) even one day I'll let you know.
K	Okay.

Am I correct?

THE COURT: You didn't tell me that, any of you.

MR. MARKEWICH: Yesterday we all assumed you were going to do it, and after --

THE COURT: The Circuit Court says you don't do it unless you are asked.

MR. MARKEWICH: That's correct, and we are all asking.

THE COURT: All right, that will be done.

[The jury entered the courtroom.]

THE COURT: Good morning, members of the jury.

Mr. Kuriansky, you may make a closing argument for the Government.

MR. KURIANSKY: Thank you, your Honor.

SUMMATION ON BEHALF OF THE GOVERNMENT:

MR. KURIANSKY: May it please the Court, Mr. Markewich, Mr. Cuddihy, Mr. Herman, Mr. Rosenthal, Mr. Foreman, ladies and gentlemen of the jury:

This case is almost over now, and I am very happy to have this opportunity to speak with you before you begin your very important part in this case, your deliberations.

I want to thank each and every one of you for your kind attention and patience during this case, and I know there have been times when you have needed it.

I think you know now, though, all of you - some of you served before, some of you are serving for the first time - that the real courtroom is a far cry from what you have probably seen portrayed on your television sets, but I think one thing you have seen is that we are all here engaged in a very, very serious undertaking. And you most of all, because jury duty is probably the most important duty that our citizenship imposes on each and every one of us.

Now, this trial has lasted about a week and a half now, and I do not expect to be very long in my remarks to you this morning, because, quite frankly, I think that the evidence in this case speaks very loudly for itself.

I do want to address myself straight off, however, to one issue, a phony issue, I submit, that has been injected into this case by all the defendants, but primarily by Mr. Markewich and the defendant Ong. I want to meet it headon and I want to submit it to you for your judgment.

In the cross-examination of Mr. Granelli, Mr. Kibble and Mr. Henry, there has been an attempt to suggest, most unsuccessfully, I would submit, that there was some sort of massive Governmental misconduct going on here.

Mr. Markewich has attempted to insinuate that Granelli and Kibble were always corrupt agents, on the pad,

secretly on the pad, and that Mr. Henry was sitting back in his office fabricating tapes, destroying evidence.

Now, you have heard a great deal of this type of investigation; you have met the people involved, and you have had an opportunity to size them up for yourselves, to assess their integrity and their credibility.

You have heard Mr. Granelli for almost a week on that stand. You have heard Mr. Kibble, you have heard Agent Henry, and most importantly, perhaps, you have heard those tapes and you have seen those transcripts.

I submit to you that having seen Mr. Granelli, having seen Mr. Kibble and having seen Mr. Henry on the hot seat that is that witness stand, that if you believe, if you have the slightest belief that these law enforcement officers were out to frame innocent people in this case, you should acquit these defendants, guilty though they have been proven overwhelmingly by the evidence in this case.

I submit to you that the credible evidence in this case supports but one conclusion, that this ten-month undercover investigation was a professional and ethical investigation, and that the only legitimate complaint that these four defendants have is that they just guessed wrong. They picked on two young investigators who were honest enough to turn them in, and turn them in they did, with

their bribe offers and their bribe payments. Every red cent of it.

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When this case began, I told you that you would hear with your own ears a text book case of corruption. I submit to you that you have heard that and that you have heard a good deal more on those tape recorders.

But I submit to you what this case really all boils down to is right there in that indictment, that you can take with you into the jury room, namely, that three of these defendants, Benny Ong, Wong Wah and Tom Hok, conspired together to corrupt officials of the United States Immigration & Naturalization Service for the benefit of their individual gambling houses and the general welfare of illegal gambling in Chinatown.

While these three defendants were working and meeting together, the defendant Albert Young was pursuing a parallel and equally corrupt course of action.

These four defendants paid a total of $21,000, $200 at a clip, week after week, to two federal officials in the short span of nine months, for the simple purpose of shielding a segment of their illegal gambling clientele, specifically the illegal aliens who were frequenting these clubs, from location and apprehension by the Immigration Service.

Since the very first day of this trial, ladies and gentlemen, something that I believe Mr. Cuddihy said in

his opening remarks has been ringing in my ears. I believe he told you that this case, in his estimation, was nothing more or less than a nickel-and-dime gambling case.

I submit to you, ladies and gentlemen, that this is a bribery case, pure and simple, and that those nickel-and-dime gambling houses took their business seriously enough to shell out $21,000 in payoff money to see to it that nothing, including the federal immigration laws, interfered in that business.

How do we know this is a bribery case? First of all, ladies and gentlemen, let's be clear. This indictment charges bribery, 98 separate counts of bribery, and one conspiracy to bribe. It's not a gambling indictment.

More importantly, you have $21,000 in bribe money in evidence in this case, not gambling money, bribe money, and all the nit-picking in the world over those few FBI consent forms that the defendants selectively extracted from over fifty is not going to make that $21,000 disappear, is not going to make Boyd Henry's 150 pages of bribery reports disappear, and most assuredly, is not going to make those hours of tape recorded bribe offers and bribe payments disappear.

This is a red herring, ladies and gentlemen, and I ask you to reject it outright.

3 dhmch

When did this case really begin? Mr. Markewich would have you believe that it began back in the summer of 1973, with Granelli and Kibble already on the pad, Mr. Ong's pad, no doubt. But this baseless suggestion is founded only in Mr. Markewich's inventive questioning and nowhere in the evidence in the case.

Indeed, Granelli is off working in a court project outside of Chinatown for most of that summer, and Mr. Ong himself, despite hours and hours of tape recorded conversations, never suggests anything but that this scheme was hatched by him, and him alone, on October 14, 1973, just when Granelli and Kibble told you it was.

Ong had apparently tried to feel Granelli out the week before with that flash of a roll of money as they were walking through Chinatown, and he obviously thought that in Granelli and Kibble he had found two easy marks, two young investigators that he could take under his wing.

In fact, when Granelli asked Ong about this some months later, asked him why he had taken the chance of approaching him in the very beginning, Ong confidently replied that he only had to know somebody for a few minutes to tell whether or not they were straight.

Well, ladies and gentlemen, I suppose that even Benny Ong is entitled to one mistake in twenty years.

4 dhmch

Twenty years in this business, and that's precisely what he told you himself in that November 28, 1973 tape conversation.

Mr. Ong had all the angles covered. If anyone got nosy about what Granelli and Kibble were doing meeting with Ong and Wong Wah, Ong told them what to say. "You use us for information purposes. Those my two stooges." The best thing to do, he told them,"was to protect each other, even go to court, if necessary." That's what he told them.

That conversation, ladies and gentlemen, it goes like this.

"MR. ONG: The best thing, even go to court, anything. We protect you and you protect us, see. He wouldn't say nothing. I wouldn't say nothing. Why should I? If I come out with -- I say heah, it's my headache, too. I can't say that, see.

"MR. GRANELLI: If you say what?

"MR. ONG: If he ask me, I come out, the whole thing, it's bad, bad, bad, bad for you, bad for me.

"MR. GRANELLI: Oh.

"MR. ONG: You've got families to support. Don't forget.

"MR. KIBBLE: Nothing is going to happen.

"MR. ONG: No, nothing. Don't worry about me. Nothing's going to happen. I've been dealing with those things for twenty years. No trouble.

"MR. GRANELLI: Twenty years?

"MR. ONG: In Chinatown.

"MR. GRANELLI: You mean what, with the police, you mean?

"MR. ONG: Yes.

"MR. GRANELLI: Yes.

"MR. ONG: They all like me. They all come to me but they say I'm all right. I say naturally I'm all right, you know. I make a little but I don't give a damn. That money doesn't come from my pocket, right?

"MR. GRANELLI: Who is that, the 5th? From the 5th Precinct, you mean?

"MR. ONG: All over. Headquarters, everything.

"MR. GRANELLI: Headquarters?

"MR. ONG: (Laughs)

"MR.GRANELLI: No.

"MR. ONG: You didn't know that? I'm the guy all over, pretty big shot down there,too, with them guys."

This was no stranger to these matters, ladies and gentlemen, and Ong hardly had to bring Wong Wah kicking and screaming into the scheme, either. Indeed,

Wong Wah paid $6,200 over the course of this ten months of this case for two different gambling houses, more than any other defendant, including Ong himself.

When Benny Ong showed up in Columbus Park on November 15, 1973 to make his first payment, Wong Wah was right by his side. Granelli and Kibble had certainly never approached him for money, nor did they have any idea in advance that he would show up that day. He came willingly, of his own volition, with his hand in his pocket. He obviously heard of the good deal Mr. Ong had arranged for 9 Pell Street and he wanted equally favored treatment for his gambling house at 58 East Broadway.

What about the defendant Albert Young? He, ladies and gentlemen, was perhaps the most clever, the most careful of all these defendants. He limited his exposure, his possibility of being caugnt in these illicit transactions by seeking and gaining the benefit of Ong and Wong's scheme without ever directly associating with either of them. He knew, he told Granelli and Kibble that he knew, that some people talk when they get in trouble. He admonished Granelli and Kibble time and again to be careful, not to talk to anybody.

And Young's advice as sound advice for criminals, but unbeknownst to him, he had made the same tactical

mistake as Mr. Ong himself in the very beginning, because the first men he spoke to, Granelli and Kibble, were the wrong two men. They were not criminals, they were Immigration investigators, they were two honest federal investigators trying to carry out the immigration laws that their duties imposed upon them, and they were smart enough to smell out a bribe offer when they got it and to do the right thing about it.

There is not doubt but that there was no love lost between Young and the defendants Ong and Wong Wah. He wasn't crazy about them, and apparently they didn't care for him all that much, either. But Albert Young knew what they were doing and they knew what he was doing all the time. Their personal antagonism didn't prevent him from stepping in and reaping the harvest of their corrupt scheme.

On his very first meeting with Granelli and Kibble on December 12, 1973, it was Young indisputably who approached the agents and asked to be cut in on the deal, not just any deal, Benny Ong's deal.

He said he had heard from Benny and that he wanted the same thing Benny had, that he wanted to do the same business, "But one thing, don't tell Benny, don't tell Jimmy, don't tell anybody."

Ladies and gentlemen, Albert Young didn't have to like Benny Ong and Wong Wah to know what was in his own best interest, and in the best interest of One Catherine Street gambling club. He just wanted to be sure that when he jumped on the bandwagon he jumped on his own terms.

From December 13, 1973 onward, Young proceeded to take advantage of Ong's and Wong's scheme. He paid the same two investigators the same amount of money, often on the very same day, and clearly for the very same purpose, to keep Immigration away from his gambling house, to keep INS from scaring away his illegal alien customers that had been found there in droves.

In the December 13, 1973 taped conversation, Young makes it clear that he's aware of what he's doing and of the risks of what he's doing, and that is why he has refused to deal through Ong and wants to deal directly for himself.

He says he told the others to go talk to Granelli and Kibble and toldthem that he wouldn't, but then, of course, he did approach Granelli and Kibble on his own.

"MR. YOUNG: That's the reason I tell you. I'm warning you now. Don't mention this to nobody, that's all.

"MR. KIBBLE: We don't mention.

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"MR. YOUNG: Nobody."

Then, whispering, referring to talking to the other defendants.

"MR. YOUNG: You want to talk to them? You go ahead. You talk. Not me. See, I say no. You go. You talk. Not me. I don't go."

That's what he told the other defendants, but, ladies and gentlemen, he went and he went directly on December 12, 1973 to Granelli and Kibble.

Albert Young is no shrinking violet in this corruption game, either. He knows how to protect himself. He says he has sources who have informed him that his telephone is tapped, so he wants to deal face-to-face only. And despite all the alleged inaudibles in Mr. Young's conversation, Mr. Young hardly intimidated, hardly overpowered by Granelli and Kibble, was able to make himself very clear that if these agents were ever transferred this payoff deal would come to a screeching halt.

Young, you see, was not one to spend his money foolishly. The 21 separate occasions on which Albert Young paid off the investigators are set forth in Counts 79 through 99 of the indictment. They stand separate and apart from the conspiracy count charged against the other three defendants in this case. But I submit to you that

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they stand out clearly in the evidence and that $5,000 of the $21,000 in Government's Exhibit 54 came straight out of Albert Young's pocket, under the table, and into Granelli's and Kibble's hands.

To these substantive counts of bribery, ladies and gentlemen, these payoffs, I submit to you that there is no defense at all.

Now, I'm not going to take you through each of the bribe payments by each defendant this morning, ladies and gentlemen. Mr. Granelli did that for you in detail during his several days on the witness stand, and Mr. Kibble corroborated him up and down the line. They told you the dates of each meeting, the amount of money that passed on each occasion, and the defendant who paid it or in whose behalf it was being paid. Your recollection, of course, controls on these questions of fact, and you are free to call for a reading of the testimony any time you desire. But I submit to you that if you find the testimony of these two investigators to be credible, you will find that the Government has carried its burden of proof and has carried it persuasively on each of the 99 counts of this indictment.

Is there any doubt in your mind but that this money was paid on each and every occasion that Granelli and

Kibble told you it was? You've heard about the reporting requirements imposed on Granelli and Kibble by Agent Henry; you've heard the tape recordings in which on many occasions you can almost hear the money passing in a hand shake, under the table, as Mr. Young referred, or on the back seat of a car or under a raincoat; and you have seen the money here in court, every dime of it preserved in evidence for your inspection.

What would these defendants suggest that Granelli and Kibble did? Take the money out of their own government salaries, turn it over to the FBI to make a bribery case on Benny Ong and these other defendants?

Ladies and gentlemen, you're people of common sense. I asked you on the very first day of trial to use that common sense as you listened to the evidence in this case. And I ask you again, is there any doubt that these defendants made almost weekly payments to Granelli and Kibble on precisely the days testified to by these investigators, in precisely the amounts they stated? Which are all set out in Counts 2 through 99 of this indictment.

Is there any doubt either as to the purpose of these payments? Is it not painfully clear that these defendants ran illegal gambling houses, that they derived

substantial revenue from customers who happened to be aliens unlawfully within this country, and that these defendants were ready, willing and able to pay and did pay time and time again to Granelli and Kibble in their official position as INS investigators? And is there any doubt as to the intent of these defendants, the specific criminal intent to induce these officers to violate their lawful duties and to commit a fraud upon their Government by either failing to execute their duties to locate and apprehend illegal aliens, or to give out confidential information in advance as to the time, date and places of proposed searches? Is there really any question about these matters?

I ask you to listen carefully to Mr. Markewich, Mr. Herman, Mr. Cuddihy and Mr. Rosenthal as they sum up to you when I finish.

On the first day of trial, they told you that they were going to prove a lot of things. You put them to the test. I submit to you that the Government has met its test, it proved to you precisely what it said it would on that first day of trial and it proved a great deal more than that as well.

I ask you, ladies and gentlemen, to ask yourselves, what is the defense in this case? What are the defenses to what these defendants did? I submit that you have been

treated for some days now to a defense founded in an attempt to confuse you, the witnesses and the hard evidence in this case.

Fortunately, there is just no way to confuse tape recordings; there is no way to confuse photographs; and there is no way to confuse $21,000 in cold cash.

You have been subjected, I submit, to nothing more or less than a defense by smoke screen. We have had the smoke screen of malfunctions, we have had the smoke screen of lapse in authority, we have had the breaking down doors smoke screen, and only yesterday we had the consent form smoke screen.

What does all that prove? Well, I suppose it proves for one thing that this was not a perfect investigation, that Granelli, Kibble and Henry were human just like the rest of us.

(Continued on next page)

1 slsr

There were a couple of memos out of a hundred or so that Granelli and Kibble forgot to write, no doubt due to the press of this other investigation going on in Chinatown simultaneously and the hours of work they devoted to this case. And also, I suppose, Boyd Henry was a little slow after the Christmas and New Year's holidays of 1974 in renewing his authority to begin tape recording again, but he, too, had to write memos; had to have them typed, had to have them sent down to Washington; he had to send an updated report on this whole investigation every time he sent to Washington for one of these authorizations, and that the FBI and the Department of Justice did gratuitously. That wasn't required of them as a matter of law. They just did it.

And Mr. Henry, he had ten or fifteen other cases. He was supervising this other investigation of Granelli and Kibble. He had a little bit of paperwork to do, to o. And there doesn't seem to be much doubt but that on two or three occasions during this whole investigation, out of all the recordings in this - and I believe there are some 25 transcripts in evidence and others that have been referred to, modern science let the investigators down and their equipment malfunctioned. But they told you about this openly and candidly. They haven't tried to conceal their

errors, very few, though, they have been during the course of this lengthy and difficult investigation.

But what do all those mistakes, all those very human mistakes add up to? When you clear away all the smoke, ladies and gentlemen, do they detract one iota from the crystal clear fact that these four defendants bribed these two criminal investigators, Granelli and Kibble?

And where are the illegal acts by INS? Where is the proof of the shakedown? Shakedown for what? Granelli and Kibble weren't getting anything out of this. They weren't bribery investigators; they were Immigration investigators doing their job who happened to get bribed.

Where is this proof of massive Governmental misconduct?

It may be in defense counsel's rhetoric, ladies and gentlemen, but I submit to you that it most certainly is not in the evidence before you.

Just what would these defendants have had Granelli and Kibble do? What did Granelli and Kibble do wrong? Should they simply have neglected their duties and not looked for illegal aliens that were clamoring to get into these gambling houses and clamoring to get out of them? Should they have accepted the bribe money and just lined their pockets with it? They would have been $21,000 richer

today, probably more than that. Should they just have ignored the bribe offers and let the defendants keep looking around until they finally did find two corruptable investigators?

And you can be sure that Benny Ong, left to his own devices, would have done just that, as he had done for 20 years.

Or should these two young men, Granelli and Kibble, have done precisely what they did do - report these offers immediately to their supervisors and agree to participate in an investigation, a lengthy and very difficult investigation for them, to try to bring this kind of corruption to an end once and for all in Chinatown.

I ask you those questions, ladies and gentlemen, and I submit to you that there is one answer and one answer only, and that is that Granelli and Kibble did just what they should have done.

Where is this evidence of Granelli and Kibble breaking down doors? There is not a stitch of it. Indeed, on the tape, on March 13, 1974, Granelli makes it clear to Ong and Wong that INS cannot even sneak into a gambling house. They have to rely on permission of the people inside. And when Young's house was searched, or an attempt was made to search it on December 12, 1973, permission was refused,

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and Granelli and Kibble drove away.

1.2 Where was the alleged extortion in this case? Where is the overpowering and oppressive coercion that these defendants would like you to find?

What is there in this case but two immigration officials trying to do their job to locate and apprehend illegal aliens?

Is that coercion, for a Government official to do his job and do it right?

The record in this case abounds with evidence of illegal aliens in and around these gambling houses, twelve or thirteen found in Albert Young's house in a single night; Benny Ong and Wong Wah talk about all the ship jumpers in their houses; Tom Hok doesn't want his illegal aliens scared away, and certainly not on the night of his grand opening.

Granelli and Kibble testified to apprehending numerous illegal aliens inside of, fleeing from and around these gambling houses in this case. They were havens for illegal aliens.

I ask you, ladies and gentlemen, if you were Immigration officials solemnly bound to enforce the Immigration laws of the United States, don't you think those gambling houses would be a darned good place to

start looking for illegal aliens?

I submit to you, ladies and gentlemen, that these defendants were not poor, unsophisticated people. Ong, the Secretary of the powerful Hip Sing Association, nationwide, the Hip Sing Association. Wong, Secretary of the Tai Look Association. Young, Secretary, and by his own admission, boss of the 4,000 members of the Tsung Tsin Association. Hok, manager of at least two gambling houses in his time, and for twenty years associated with illegal gambling in Chinatown.

The evidence demonstrates overwhelmingly that these were not simple, naive men unaware of what they were doing. They had businesses, illegal businesses to take care of, and they were not above corrupting Government officials to do it.

Please take a good look at all four of the defendants, ladies and gentlemen.

Are these unwary innocents, or are they greedy businessmen willing to be corrupt public officials to insure the success of their illegal businesses?

Were they maltreated or imposed upon by Granelli and Kibble? I submit to you that there is no evidence in this case of that.

I submit to you that those tape recordings

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make it clear that Granelli and Kibble never approached a single one of these defendants and never pressured them into doing anything.

Granelli and Kibble had to tread a very fine line carrying out their role as apparently corrupt investigators, but I submit to you that those tape recordings reveal Granelli and Kibble as about the mildest, unpressuring pair of so-called corrupt officers who have ever been on anybody's pad anywhere.

Even when Ong encouraged Granelli and Kibble to ask Young for more money because he had been holding out, he said, the investigators refused. They said that they would play it safe. They said this to the defendant, that they would play it straight, that that would be in bad faith. They said it on tape, ladies and gentlemen.

And when Wong Wah closed for a few weeks and moved to a new gambling house, Ong made it quite clear to Granelli and Kibble that if Wong Wah was closed, Wong Wah didn't pay.

The agents didn't put any pressure on them. They didn't ask for money when it was closed. They didn't ask when it was open. It was offered to them.

These were defendants with a criminal intent to bribe. They were hell bent to bribe. And Granelli

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and Kibble did not coerce them into doing anything. Granelli and Kibble listened to these defendants; they asked for nothing; let the defendants set the terms for the price, and they followed along.

That is what a good undercover agent does.

And Benny Ong knew just where to take them because he had been there before. He told the agents that he and Jimmy Eng take care of this business in Chinatown. He advised them to make a package deal with the On Leong houses on Mott Street because they had more gambling houses. He provided them with a cover story were they ever caught. He said, "If I get in trouble, you get in trouble. I keep quiet."

He bluntly stated, as I just read to you before, that he had been paying these police at the Fifth Precinct Headquarters there for many, many years. He bragged about the higher-ups in the Police Department he had known; two police commissioners; a chief of detectives, a chief inspector.

He talked about providing air line tickets, liquor and women.

And I submit to you that whether you believe Mr. Ong in whole or in part, this kind of conversation demonstrates the bent of mind of this defendant, his

willingness to talk about and engage in the very kind of corrupt conduct that he is charged with having done in this case.

But I submit to you, too, that you may find from the evidence that Benny Ong was not always puffing and boasting; was not always full of hot air, as Mr. Markewich would have you believe. He talked facts, figures and dates. He told you about the $5,000 he had laid out for Albert Young for police inspector --

MR. ROSENTHAL: That is objected, if the Court pleases.

THE COURT: I will instruct the jury I will sustain the objection in part, but the jury may not consider whether or not any money was laid out for Albert Young in determining the case concerning Mr. Ong or Mr. Young. They may, however, consider with respect to Mr. Ong the fact of his having made the statement if the jury finds that he in fact did make the statement. But as to Mr. Young, the statement is hearsay.

MR. KURIANSKY: [continuing] He told you about this $5,000. He told you about it on three different occasions, not three different stories, just three different times he told the story.

He told you it was two years ago; that it was to

protect gambling and vice from 14th Street to Mulberry Street, and he told you how he made Young pay him back $500 a week for ten weeks.

You listened to it. You decide if there was not a ring of truth to many of Mr. Ong's statements.

Similarly, Mr. Ong never boasted about things that he couldn't do. He didn't talk about the impossible. He made it clear that you couldn't pay off the big shots directly. He never claimed that he had. What he did say is that he got to know these officials when they were young, just like Granelli and Kibble, and it was their men that he paid off.

Ong and Wong Wah were well versed, too, in the techniques of undercover work. They knew how to avoid getting caught, and shared their expertise with Granelli and Kibble in their December 5, 1973 taped conversation.

3.3 "Ong: But you be careful - you know - but ah - don't say nothin. Don't do anything, you know. Don't let go, you know. You catch 'em catch 'em. Don't let go or anything - eh - You're one little mistake, they catch you - down there. Maybe they plan something - you know.

"Kibble: What do you mean?

"Ong: Maybe some cops in there or something - you know - if they if they try to buy you -or something.

Don't do that.

"Kibble: Benny - we don't - we don't talk to anybody unless they're with you.

"Ong: Yeah - say you know they - they probably say something -- you know - but -

"Granelli: What do you mean? The cops would say something to us?

"Ong: No - them - them people. Someday the cops far away someplace. You - you pick up the guy - you know - they guy say 'Oh you - you - you let me go - you keep something' - don't do it -

"Granelli: Oh you mean if - if they arrest the guys who did the sticup and try to buy the police off, not to let them go?

"Ong: No.

"Granelli: Or if they try to pay us off - don't let 'em go? Oh, okay.

"Wong Wah: Well ah - because somebody - somebody bribe to you - you know - ah -

"Ong: Don't do that.

"Wong Wah: Don't do that - you know - that -

"Ong: Don't do that. Either you let 'em go - don't take no money.

"Wong Wah: That's a trick - you know - something -

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something like that.

"Kibble: They're trying to trick us into getting caught?

"Wong Wah: Because they ah -- try ah -- get the evidence, you know."

This, then, is Wong Wah who Mr. Herman told you in his opening was paying off out of fear, had no corrupt intent to do what he did.

He just lectured these criminal investigators on how to avoid getting caught in a bribe situation.

Wong Wah, ladies and gentlemen, knew what bribery was, and it didn't phase him one bit about getting into this case.

What about Mr. Young? He knew about money, how to turn a profit.

Indeed, as late as July 17, 1974, one day before this investigation comes to a close, Mr. Young comes up with another scheme for making money.

He wants Granelli and Kibble to come to his house, seize a couple of aliens, and then he will go back to the gambling house, ask for a little bit more protection money, and he and the investigators can share in it.

That is this man who is being coerced.

Incidentally, what was Albert Young's reaction

to this story about the $5,000? He was confronted with it. Yes, it is true that at one point late in the conversation he gave a hollow denial. Be[illegible]is first reaction when they caught him unaware was that he didn't want to say nothing about it.

Then later, that he didn't like big mouths like Benny Ong talkir about those kinds of things.

Ladies and gentlemen, this was a careful man. He was careful enough to reap the benefits of this scheme and yet protect himself from any direct association with these other defendants.

He knew the dangers of that, the greater likelihood of being caught. He knew the advantages of secrecy, and he repeatedly cautioned Granelli and Kibble about it. This was not a man who was going to blurt out his prior history of corrupt conduct. This was a man who talked by indirection, but I submit to you that it is all there in those transcripts, on the lines and between the lines.

Ong, of course, was much more direct. When Kibble suggested to him on January 30th, 1974 that it must cost him a lot of money every week, what with the cops, Immigration and fixing cases, Ong laughed and said, "A little over here, a little over there, heavy."

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And he told Granelli and Kibble on March 13, 1974 that he would never give money to a particular policeman by the name of Bill Miller because he wore a tape recorder and he would arrest Ong for bribery and turn the money in as evidence.

And after he was arrested by Nadjari's police for bribery, Ong to. Granelli and Kibble that those cops had tricked them. He told them not to do the same thing to him.

And Albert Young, after the Nadjari arrest, what does he do? Always careful. Now he only wants to meet with the investigators every two weeks. He thinks Nadjari's people are following him around. And later he gives Kibble a code name, "Red," to use when he calls on the telephone.

Are these men unaware of what they are doing?

And what about Tom Hok? He entered this scheme a little later than the other defendants, but I believe his Honor will tell you, a defendant is chargeable with the crime of conspiracy if he willingly and knowingly enters it at any time during the course of that conspiracy and is aware of its unlawful purposes.

There cannot be much doubt, ladies and gentlemen, but that Tom Hok became a fully chartered member in this conspiracy and knew precisely what he was doing all the time.

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On January 17, 1974, he first approached Investigators Walsh and Mulchern. Even at that time he said he wanted them to go see Benny to straighten this thing out. Obviously he knew about Benny Ong's deal, and he wanted in on it. After all, as he later told Granelli and Kibble, he had just moved away from being head of a gambling house at 68 Mott Street, and now he is taking control of 61 Mott Street. It was opening night, and he sure didn't want Immigration around.

He later said on tape that he also knew about other houses that were paying off Granelli and Kibble; and their warning to him about the seriousness of the crime of bribery and what could happen if they all got caught, was hardly enough to deter him from his unlawful course of action. From January through March of 1974 Hok met with Granelli and Kibble, often in the company of Benny Ong and Wong Wah, usually at the Hong Gung Bar, and just as they did, made $200 bribe payments, and those are in Counts 64 through 73 of this indictment.

He knew of Ong's and Wong's involvement in this scheme, and they were well versed in his. They paid their bribes in each other's presence without reluctance or fear.

These, ladies and gentlemen, were co-conspirators.

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3.4 And after the Nadjari arrest what does Tom Hok do? He closed his gambling house for a month or two, and then when things had cooled down he reopened on June 20, 1974.

But Hok was nobody's fool either, and he decided that it would be safer to let one of the other defendants do his bidding for him.

So from June 20th through July 17th, 1974, Hok gave his money to Benny Ong and let him take the risks of paying this dirty money. Those payments are now 74 through 78 of this indictment.

Throughout the course of this conspiracy, ladies and gentlemen, Tom Hok paid, or Benny Ong paid for him some $3,000 in bribes for that nickel and dime gambling house he was running - a house, by the way, that he told us on tape had a kitty of several tens of thousands of dollars, and perhaps only outmatched by Mr. Ong's own house with a treasury of $200,000.

Ladies and Gentlemen, this bribery conspiracy came to an end on July 1974 when the Federal Bureau of Investigation executed arrest warrants and search warrants of these gambling houses.

I submit to you that the testimony of Granelli and Kibble, as corroborated by these tape recordings,

establish the guilt of these defendants beyond question.

They establish these four men Ong, Wong, Tom Hok and Albert Young as corrupters, pure and simple; as men who talk as easily about corruption and payoffs as you talk about what you had for dinner last night.

I ask you to examine those tapes and transcripts and see if you find even the slightest hesitancy on their part to engage in this course of criminal conduct.

I guarantee you there is not a single word on those tapes about the morality or illegality of what they were doing.

I submit to you that they had no pangs of conscience; they had only the pangs of their pocketbooks.

The Government was presented in this case with a unique opportunity - undercover agents in on a corrupt scheme from the very outset. Normally the Government only detects crimes of this kind after they occur and must rely for its witnesses on people who participated in the crimes and the scheme itself. Here, however, Mr. Ong guessed wrong, and admitted into his inner circle of corruption and illegal activity two honest INS investigators. Granelli and Kibble were thus in a unique position to learn about corrupt activity that had gone on and would go on in the future in Chinatown; and I submit to you that it

was the Government's obligation and the Government's responsibility to use them to the fullest extent to expose this corruption and to put an end to it once and for all.

Now there has been some talk in this case about tape recordings, and I believe his Honor will charge you later that the use of those tape recordings was 100% legal and proper. Indeed, this case provides an object lesson as to why tapes are so necessary.

I submit to you that without those tape recordings this would have been a very different case.

I submit to you that if all these defendants had to contend with was the words and testimony of Investigators Granelli and Kibble, uncorroborated by tape recordings, you would have been treated to an altogether different defense.

These defendants would have denied offering or paying any of this money --

THE COURT: Excuse me, Mr. Kuriansky, I believe I must strike out that argument. The jury will decide the case as it was presented to them and not some other case they might have had.

I instruct the jury to disregard any suggestion that they speculate about what any defense might have been under other circumstances.

I further instruct the jury, as I will explain to you in greater detail, that the defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt of the crime charged against him, and that he doesn't have to present any defense.

Please go on to something else.

MR. KURIANSKY: [continuing] Ladies and gentlemen, we all cherish our privacy, and tape recordings of this kind are certainly not pleasant things to have to deal with. But I submit to you that nothing thrives better in secrecy than crime and corruption, and sometimes the Government must use stealth of its own to ferret out these crimes.

This, I submit to you, was just such the case, for without these tape recordings crimes of conspiracy and bribery might well have gone undetected.

I am almost finished now, ladies and gentlemen, and I do apologize for being a little longer than I expected.

A great deal has been said in the heat and anger of this courtroom, and out of an excess of caution I felt it necessary to respond.

The evidence of three of these defendants having conspired to bribe public officials, and of all four of them having, in fact, bribed public officials on many,

many occasions is, I submit to you, overwhelming.

The Government has only one reluctance, that some of you, no matter how imposing the evidence, no matter how overpowering the facts in this case which established the guilt of these defendants, might be unable to convict for reasons of misplaced sympathy --

MR. ROSENTHAL: That is objected to, if the Court pleases.

THE COURT: Yes, I will sustain that.

MR. ROSENTHAL: Your Honor will instruct them on the law.

THE COURT: Yes, I will instruct them that they cannot be guided in any respect by sympathy. That is not a proper matter for summation, Mr. Kuriansky.

MR. KURIANSKY: [continuing] Ladies and gentlemen, the public is represented in this courtroom and has a stake in the outcome of this case.

The United States Government has a deep interest in seeing to it --

MR. ROSENTHAL: That's objected to, if the Court pleases.

THE COURT: Yes,I will sustain that also.

MR. KURIANSKY: Had Granelli and Kibble, in fact, succumbed to the bribe offers in this case, the

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enforcement of the Federal Immigration laws would clearly have been compromised.

Corruption in the form of bribery, ladies and gentlemen, always requires a partnership. Usually public officials on the one hand who are willing to sell their oath for money, fortunately not present in this case, and private individuals, on the other hand, who are willing to sell their integrity for their own selfish interests. Corruption simply cannot survive if those in the private sector were not willing to pay off to get what they wanted.

These defendants, ladies and gentlemen, knowingly and wilfully and without the slightest justification but their own self interests paid $21,000 to two public officials to impede the due and proper administration of the Immigration laws, and thereby to guarantee the success of their illegal gambling ventures.

I submit that you twelve men and women cannot and should not tolerate that.

The Government asks you to return a guilty verdict on each and every count of this indictment as a clear warning that those who attempt to corrupt our system and put law enforcement under the heel and on the pad cannot walk out of this courtroom with no responsibility for what they have done.

The Government asks no special favors. It asks only equal justice; but even under that standard, that very high standard, the Government submits that it has proved its case beyond any doubt whatsoever.

Thank you.

MR. KURIANSKY: Probably about 20 or 25 minutes, your Honor.

THE COURT: Is there any juror who would like a recess at this time? Please raise your hand.

All right, you may continue with your rebuttal.

MR. KURIANSKY: Mr. Foreman and members of the jury:

I want to say something right off, and that is that that last suggestion by Mr. Rosenthal was in no way intended on my part the way he suggested it. I asked you to take a look at the defendants, to take a look at the evidence against these defendants, their words on tape, the money they gave. That's what I asked you to do: Look at the evidence. And I suggest that is more than any of the defense counsel in this case have asked you to do.

Now, this is my last opportunity to speak to you, and under the rules of the court, I can't be very lengthy in doing that. I'm tempted to reply to each and every misstatement or nonreading of the record since they began last Wednesday afternoon, but I think the evidence has an answer for everything they have said and you have heard the evidence as well as I have in this case.

There are a few things, however, that I want to point out to you. I want to point out to you two things

that they have steered clear of, and that is those tape recordings and that is that money in evidence. We haven't heard much about that in the last four to six hours, and I also want to ask you a question, which I will get to in a little bit.

In these summations, ladies and gentlemen, we have heard a lecture on the history of the Chinese people in America, we have heard about oppression, we have heard about discrimination, we almost heard about Thanksgiving until his Honor interrupted.

I don't mean to belittle these subjects because they're serious matters, but they don't have the slightest thing to do with this case.

Under Mr. Markewich's theory of this case, his theory of oppression, Mr. Ong, Chinatown's chief corruptor for twenty years, would have immunity to illegally gamble, illegally bribe and anything else, because that's what Society has done to him. It's preposterous, ladies and gentlemen. It's designed to grab at your sympathy and to give Mr. Ong a free license to commit crime.

Did you hear Mr. Ong on tape being oppressed or intimidated? Did you hear any of them being discriminated against? And what is this talk about economic coercion? We've been regaled with it in summation but there is no

evidence of it whatsoever.

Ong says that the bribe money doesn't even come out of his own pocket. Albert Young is so oppressed by what Granelli andKibble and what they're doing to him that on July 17th, before he is arrested, he's still suggesting to him that they ought to take off a few more aliens and then he could rip off a few more gambling houses so they could split with him.

This $21,000 in bribe money, ladies and gentlemen, was coffee money to these illegal gambling houses. Mr. Markewich, and I think Mr. Rosenthal just now, said it was like a friendly game of cards at the E[illegible] Well, the Elks don't pay $21,000 in bribe money and the Elks don't have a Jimmy Eng, Ong's fellow corruptor in Chinatown, making $3,000 a week on his gambling houses, and the Elks don't have $200,000 in their house treasury for gambling. And they were in bad times, according to the defendants.

Benny Ong and these other defendants were not kowtowing to Granelli and Kibble. They weren't being obsequious to these federal agents. They were just bribing them. That's all they were doing, just bribing them.

Mr. Markewich has read Webster's dictionary, but I submit to you that he has not read the record in this case to you.

According to Mr. Markewich, every time a law enforcement official came into Chinatown, Mr. Ong felt required to buy him dinner and to pay him off, as a showing of his great respect for them. It's hogwash, ladies and gentlemen, absolute hogwash.

These defendants had large-scale illegal gambling operations going on which depended substantially for revenue from the illegal aliens who gambled there. That's what these defendants were wooing Granelli and Kibble for. That's why they were paying them off. It wasn't out of respect; it was out of greed and nothing but greed.

These defendants weren't afraid of Granelli and Kibble. They paid them off only when they wanted to, and when it suited their purpose. Albert Young said he would cancel the deal if they were transferred, and that is right on tape. Benny Ong said that Wong Wah would not pay off at all unless his house was open.

What happened to their great respect for Granelli and Kibble on these occasions, when they couldn't serve the defendants' purposes?

Now, I want to ask you this question, since it's the one question that defense counsel simply can't answer in this case, and that is" What did Granelli and Kibble do all this for? We know it isn't a shakedown or an extortion,

because if it was, we wouldn't all be here today. The United States Attorney's Office and the FBI wouldn't have had the slightest knowledge about these payoffs, and Granelli and Kibble would be $21,000 richer today, if this was a real extortion.

You could understand an extortion defense if Granelli and Kibble had really been corrupt and were pocketing this money, but they weren't. The money went right to the FBI and right into this courtroom.

So what did they get out of all this? They had to put in tremendous hours to work in this investigation and another one going on at the same time. They were wearing recording boxes under their arms, in the small of their bar[illegible] They had to turn out an unbelievable amoutn of paper work so these gentlemen could then cross-examine them over days with it, and then they had to come into this court for hours upon hours and submit to grueling cross-examination.

What rewards, what personal advancement was in it for them? Granelli and Kibble were Immigration investigators; they're not bribery investigators. Their job is to find aliens unlawfully in the United States. They weren't going to further their career by reporting a bribery incident and then having to go ahead and develop

an investigation on it.

Granelli was an INS investigator when this thing began; he's an INS investigator today. Kibble was an INS investigator; he's now with a fellow law enforcement office making even less money than he was then. Boyd Henry, special agent of the FBI for 25 years; special agent now.

What evil motive did all these men have to do this terrible thing to these defendants? Other than to do their job and to do their best to rid Chinatown of this kind of corruption?

We have heard again this morning the suggestion about corrupt activity on the part of the agents prior to October 14, 1973. No evidence; just an insinuation. Granelli is off on this court project for the summer of 1973 and do you think Benny Ong is going to be shelling out money to him when he's not even in Chinatown doing investigations? He wouldn't even pay him when he was on the pad and his house closed down for a week.

Now Mr. Rosenthal has the whole Immigration Service involved in this frameup, the whole Service knew about this; they knew that Granelli and Kibble were corrupt, so they were giving them a chance to redeem themselves. So it's not only Granelli and Kibble, it's not only their

supervisors, it's not only Boyd Henry, it's the whole Immigration Service knew about how corrupt these fellows were, and it was all perpetrated just so you could get these four defendants. It's ridiculous.

Now, Mr. Markewich has suggested quite cavalierly that you should dismiss out of hand all those meetings and all those payments that weren't tape recorded. The suggestion is silly. Mr. Rosenthal recognized it as such. He at least acknowledged payments were made. You have to: the money is there.

After some five months of reporting virtually every payoff in this case, it was decided by Mr. Henry, in view of the Madjari arrests, in the interests of the safety of these investigators, because Chinatown was hot after these arrests, that they no longer do any more tape recordings in Chinatown.

I submit to you that this was a reasonable law enforcement decision, and that the lack of the tape recordings on these subsequent meetings, from April to July, hardly warrants a finding on your part that these payments never occurred.

It was certainly clear by March of 1974 that these payments were being made on a regular weekly basis and would continue to be made as long as Granelli and Kibble

lived up to their side of this bargain not to search for illegal aliens.

Granelli testified about those subsequent payments, Kibble testified about; the money from these payments after the reporting stopped was turned over just like all the others to Mr. Henry, and here it is in evidence. If it didn't come from these defendants, where did it come from?

Now, I listened in vain to Mr. Markewich. I was waiting for him to tell you why you couldn't believe even the tape recorded payments. But even he had to acknowledge that the money passed on those occasions. You could hear it passing. In the middle, three lines into a conversation, you'll have Granelli or Kibble saying "Thanks." What do you think that was for?

"2 for me, 2 for Wong." Tape after tape that's on there. That money passed. Even Mr. Markewich can't make that disappear.

Instead of talking about those tape recorded meetings, though, he has chosen, quite understandably, to talk about those that were not taped. He's told you that the real truth in this case came out at this November 8th meeting, that that's where the defendants' innocence was shown. It's ridiculous. That meeting has very little sig-

nificance, no money passed, no money was supposed to pass. It couldn't be surveilled because it took place inside of a building in Chinatown and it couldn't be reported for the same reason, because Mr. Henry, that early in the investigation, felt it was too risky to allow those men if there were recording equipment, not having any idea what might happen.

That meeting of November 8th might have some significance if this were only a one or two-meeting case. But this is a 50-meeting case, and 25 of them are on tape, and you've heard them. Don't you think that if something special had happened at that November 8th meeting or at this November 21st meeting where the equipment malfunctioned, if Granelli and Kibble had broken Benny Ong's arm, if they had threatened to harass him for the rest of his life, don't you think you might have heard about it on November 15th, on November 28th, on December 5th, on December 12th, on December 19th, on December 26th? Don't you think you might have heard something about that if it ever really happened?

I submit to you that the evidence cries out that nothing like that every happened in this case.

And don't you think that if this was the massive frameup that these gentlemen would have you believe, that

Granelli and Kibble would have concocted all sorts of incriminating things to say about these unrecorded meetings? You didn't hear any of that. They testified at those meetings about the same thing was said as happened in the subsequent recorded meetings that you heard. They weren't trying to do these men in. They were reporting what happened.

In fact, whenever a taped meeting followed an unrecorded meeting, or in the one case the malfunction, Granelli and Kibble, you will find, are often on tape repeating to the defendant what was said at the last meeting, giving them a chance to confirm it, deny it. They don't deny it; they affirm it each and every time, because that's what happened.

I submit to you that you may fine that nothing special took place at this November 8th meeting that Granelli and Kibble told you about. They told you all about that meeting and it's all fully confirmed. The very next week when the first payment goes down on November 15th, when that payment goes down, they have the equipment, they record it. That's the critical meeting. That's when he shows up with Wong Wah. That's when he says again what the deal's going to be.

From November 15th through the end of December,

every single payment, every single meeting, with the exception of that one November 21st meeting where there was that malfunction, every one is tape recorded and you have heard them.

It is clear from these tape recordings that Granelli and Kibble didn't intimidate these defendants. The defendants knew that Granelli and Kibble couldn't break down doors. Granelli is on tape even saying to them that he couldn't even sneak into the house. They had to rely on consent, and that's just what they did. The only evidence in this case is that they waited for consent. If they didn't get it, they left.

Investigator Walsh wasn't knocking down Tom Hok's door on January 17th; he was knocking on it. And then he left. Tom Hok came outside and talked to him. That is when he approached him, outside. He wasn't in there breaking down his door.

Benny Ong knew that Immigration wasn't interested in the elderly Chinese inside. He knew they got passes. He told Wong Wah they are only interested in those illegal ship-jumpers that have just come in.

I submit to you, ladies and gentlemen, that the rightness or wrongness of this country's immigration laws are not at issue here. Our Congress passed those

laws for very goodreasons and Granelli's and Kibble's job is to enforce them. That's all.

There are all sorts of reasons why you don't want people unlawfully entering these United States without proper investigation, without submitting to certain requirements. They can bring all sorts of things in; they can have all sorts of histories that have to be checked out. When they meet those regulations, they can come in lawfully.

Mr. Herman tells you that Wong Wah never says why he's paying off because it all happened November 6th, that night that the investigators are on a search operation. They're not there to talk about bribery, they don't know if Wong Wah is going to bribe them. When he comes to talk to them, it's with Benny Ong on November 15th, with money, and he tells them "Don't come to my house. Don't stand outside." That's what he's paying for.

Mr. Herman says that the Government manipulated and controlled these conversations. 25 conversations on tape and these defendants couldn't get a word out of their mouth to deny it?

Wong Wah's criminal intent, ladies and gentlemen, is in that $6,200 he paid. And he could only afford one necktie for this trial, but he could afford that $6,200 in

bribes.

Mr. Cuddihy, speaking for Mr. Hok, there was no reference to $10,000. Mr. Hok himself, when Benny Ong says he's got $200,000 over on Pell Street, he says, "We've got several tens of thousands of dollars also in our treasury."

And later Hok himself admits approaching Investigators Walsh and Mulkearns on that night of January 17th. Mr. Cuddihy didn't find it but it's right there on tape, January 23rd. Hok admits approaching Walsh.

Granelli, quoting Ong: "He says you've got to be careful. You can't just go, go up to people in the street, Immigration people in the street and start giving them money.

"Tom: No, I never do that before.

"Granelli" Never did it before that?

"Tom: No (laughs).

"Granelli: Why did you try at that time?

"Tom: (Laughs) Oh, I see the young guy that was there. That -- what his name?

"Granelli: Bob.

"Tom: He know me. He know me at the 68.

"Kibble: Oh, he seen you there?

"Granelli: 68, oh, he's --

"Tom: Many times, you know.

"Kibble: You know he's honest.

"Tom: (Laughs) So how much? How much did your boss say? 2, right? 2, huh?"

He was saying more than "Humn" on those occasions.

January 23rd, Wong Wah says he knows about about Tom Hok coming into this thing and having approached Walsh and Mulkearns with that offer.

January 30th, Tom Hok again says a little more than "Humn." He asked Granelli and Kibble how many houses are paying off. He says he knows about four or five.

March 6th, Hok says he knows Wong Wah.

It's an open and shut case, ladies and gentlemen. That was what Mr. Cuddihy said. It's an open and shut bribery case, not a gambling case.

Mr. Rosenthal once again, following Mr. Markewich's lead, suggesting that these agents were corrupt back in July of 1973. No evidence; just throws it out. It was Supervisory Investigator Lyons who sent Kibble back that night to see Benny Ong. Henry Brattlie, there has been testimony, was a team leader that night, leading these investigations for the aliens. He went off to do that. Granelli went off to tell Lyons what had happened. Lyons sent Kibble and Granelli back to give this message to

Ong. That's all that happened. Nothing surreptitious, nothing malevolent going on there.

Once again we hear about this consent form. Boyd Henry asked these agents to sign a consent form because he so doubted their credibility that he wanted to have it on paper. That's ridiculous. This is a standard consent form. The FBI gets it every time anybody puts on recording equipment.

MR. ROSENTHAL: There's no proof here it's a standard form of any sort, your Honor.

THE COURT: The jury's determination as to what the proof shows will be controlling.

MR. KUBIANSKY: Mr. Rosenthal says that everybody thinks his phone is tapped. Well, I ask you, does everybody, like Albert Young, have inside informants who tell them that it is tapped? That's what he says he has on tape. He's been informed that his is tapped. How did he find that out?

This arrangement, he says, was just for protocol. Albert Young was paying for protocol so he'd be treated nicely. $5,000 for protocol. The protocol was "I'll pay you not to go looking for illegal aliens. You call me in advance or you stay out of their altogether." That's the protocol; that's the deal.

And contrary to what Mr. Rosenthal said, on tape,

at the time of the first payment, December 13, 1973, Albert Young says, "Don't go there no more. Don't cross that way. Don't come in my place." He's not asking for respect, for him to be the first to be told when they come. He's saying, "Don't go there any more and I'll pay you not to go there any more."

Kicked and kneed in the groin? Granelli tells him, "We'll go to jail for the rest of our lives for doing this." And Albert Young says, "That's why I'm telling you not to tell it to anybody." So he can be shown a little respect? Is that what he's talking about here?

Mr. Young didn't have anybody to report it to? He could have come right over here. He would have gotten a fair hearing. He didn't have to go to John Mitchell. He didn't come here because he found it more effective to pay bribes and to not expose the existence of his illegal gambling house and his illegal customers.

Ladies and gentlemen, it's become very fashionable these days to take pot shots at the Government, and that certainly is what these defendants are counting on here in this case. But it just doesn't wash in this case; it doesn't have any place in this case.

This was not a perfect investigation, no. But I submit to you that it was an investigation that produced

overwhelming evidence of the guilt of these defendants on every count. They were careful of reporting requirements. Kibble and Granelli had to submit memos to Boyd Henry that these gentlemen have used so effecitvely. They got authorizations to tape record conversations, even though the law didn't require it. They got consent forms even though the law didn't require that. Surveillance logs, photographs, tape recordings, money carefully preserved in evidence. They even sent for fingerprints, knowing that it's very difficult to obtain fingerprings off cash but they did that too. They did everything they could.

Ladies and gentlemen, I submit to you that when the Government conducts an investigation of this length and complexity and produces the kind of overwhelming evidence of criminal activity that it has in this case, it deserves not the condemnation and ridicule heaped upon it by these defendants, but your thanks. I ask you to find each of these defendants guilty as charged.

THE COURT: Members of the jury, you haven't heard me yet and I have some instructions as to the law to give to you and they're somewhat lengthy, and I believe they're important. For that reason, I ask you not to reach any conclusion about this case and not to discuss it with each other at all until after I have had an opportunity

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

-v-

ALBERT YOUNG, et anos.,

Defendants.

----------X



NOTICE OF MOTION

Docket No. 74Cr. 1127

S I R S:

PLEASE TAKE NOTICE upon the annexed affidavits of GILBERT S. ROSENTHAL, ESQ., and ALBERT YOUNG, both duly sworn to the 10th day of March, 1975, and upon the indictment herein and all the papers and proceedings heretofore had herein, the defendant, ALBERT YOUNG, will move this Court at a time and place to be designated by the Court for an Order:

1. DISMISSING the First Count of the indictment herein in respect to the defendant, ALBERT YOUNG;

and

2. GRANTING the defendant, ALBERT YOUNG, a severence of the trial of the indictment herein from that of the co-defendants, BENNY ONG, WONG WAH and TOM HOM;

and for such other and further relief as to the Court may seem just and proper in the premises herein.

Yours, etc.

Dated: New York, N.Y. March 10, 1975

GILBERT S. ROSENTHAL,
Attorney for the Defendant, Young
401 Broadway
New York, New York 10013
Tel: (212) 226-7971

TO: HON. PAUL J. CURRAN,
United States Attorney
For the Southern District
of New York
(A.U.S.A. EDWARD J.
KURIANSKY, ESQ.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

-v-

ALBERT YOUNG, et anos.,

Defendants.

----------X

AFFIDAVIT

Docket No. 74 Cr. 1127

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

GILBERT S. ROSENTHAL, being duly sworn, deposes and says:

1. That he is an attorney at law, duly admitted to practice in the State of New York, and the within Court. That your deponent is the attorney for the defendant, ALBERT YOUNG, having appeared for him at the time of his arraignment before the United States Magistrate on the 18th day of July, 1974.

2. That at the time of the arrest and arraignment of the defendant YOUNG, the defendants ONG and WONG were also taken into custody and arraigned on the same day under separate complaints.

3. The government's complaint against each of the [illegible] made payments to two criminal investigators of the Immigration and Naturalization Service to influence their official acts, primarily to induce them not to search different premises, managed by each defendant, for the presence of "illegal aliens".

4. The indictment for the first time charges in its First Count a conspiracy by all of the defendants to effect a violation of

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Sections 201 (b) of Title 18 U.S.C. This Section is entitled "BRIBERY OF PUBLIC OFFICIALS AND WITNESSES".

5. It is apparent from a reading of both the initial complaint against the defendant YOUNG, a photocopy of which is hereto annexed and made a part hereof as if herein set forth in full and marked Schedule A, together with a reading of the First Count of the indictment herein plus the first four introductory paragraphs of the indictment (a copy of which is hereto annexed and marked as Schedule B) that the defendants ONG, WONG and YOUNG were associated with separate and distinct Chinese Benevolent Associations who were located at separate and distinct addresses within the Southern District of New York in the Chinatown area and who allegedly managed what is described in the indictment as an "illegal gambling business", as and for his respective Chinese Benevolent Association.

6. It is apparent from the complaint filed against each of the defendants for the United States Magistrate and from the allegations contained within the indictment herein that the theory of the Government is that each of the defendants, at various times, dates and places made promises to two criminal investigators, GRANELLI and KIRBY of the United States Immigration and Naturalization Service believing that the aforementioned investigators were accepting bribes upon promises made individually to each of the defendants that the business of the individual gambling business in question would not be annoyed and harassed by Agents of the United States Immigration and

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Naturalization Service entering to search for the presence of illegal aliens.

7. Your deponent, together with the attorneys for the co-defendants ONG and WONG, were permitted by A.U.S.A. KURIANSKY to read rough drafts of transcripts of taped conversations had by their respective clients plus the co-defendant TOM HOM (at that time not apprehended) and MESSRS. GRANELLI and KIBBLE.

8. It is the position of your deponent that these transcripts which purport to be transcripts of monitored telephone conversations and broadcasts of personal conversations had between investigators GRANELLI and KIBBLE and all the defendants established without any question that no conspiracy ever existed among the defendant YOUNG and his co-defendants.

9. The first transcripts commenced with the 14th of November, 1973, concerning telephone calls to the defendant ONG and the first recorded meeting between the defendants ONG and WONG and investigators GRANELLI and KIBBLE is reflected in a transcript of November 15, 1973.

10. In what purports to be a transcript of a conversation had December 3, 1973, between the investigators and the defendants ONG and WONG, we find the defendant WONG stating that he told the defendant YOUNG "I want nothing to do with you. I take care of my place you take care of your place".

11. The transcripts are replete with derogatory statements made by the defendants ONG and WONG concerning your deponent's

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client, YOUNG.

12. In a transcript of a conversation allegedly had December 17, 1973, between the investigators and the defendants ONG and WONG, both of said defendants state in no uncertain terms that they cannot and do not talk with the defendant YOUNG. ONG warned the investigators that if they did any business with YOUNG not to let him owe them any money and WONG at that moment told them that the defendant YOUNG is stupid. At another place in the transcript WONG tells the investigators to be "rough" with YOUNG and at still another point it appears that all four participants, KIBBLE, GRANELLI, ONG and WONG are laughing at, and making fun of the defendant YOUNG.

13. During a conversation of December 26, 1973, the transcript reveals that the defendant ONG stated that the defendant YOUNG is "no good" and that the agents should be "careful talking to YOUNG" and WONG chimed in that YOUNG would cheat the agents and "is crazy".

14. In a transcript purportedly of a conversation between the defendant YOUNG and investigators GRANELLI and KIBBLE, held on the 13th of December, 1973, YOUNG specifically demanded that they not discuss any business dealings of his with the defendant ONG or anyone else, and on the 19th of December, the investigators advised ONG and WONG that YOUNG had stated that he did not want the co-defendants to know anything about any dealings between him and the agents.

15. Your deponent can give other examples but submits that any transactions or agreement reached between the Federal Agents and the defendant YOUNG were separate, apart and distinct from any

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matters, transactions and agreement had with the Federal Agents, GRANELLI and KIBBLE and the co-defendants ONG, WONG and HOM.

16. When your deponent, in oral presentation to the Court, stated that under the authority of Kotteakos v. United States, 328 U.S. 750, 90L ed. 1557, it was apparent that no overall conspiracy existed and that each of the defendants, and particularly the defendant YOUNG, were involved in separate and distinct substantive charges of bribery. In fact, the instant case is much stronger from a defendant's point of view than that of Kotteakos in that the so called "hub of the conspiracy" was not, in fact, any co-conspirator, but the Federal Agents, who had posed as conspirators. While the Court's observation that the Second Circuit has by its decision lessened the import and impact of Kotteakos, the close analysis of the decisions doing so indicates that it was true in full blown narcotic conspiracy charges and that a definite distinction seemed to be made by the Court of Appeals in connection with indictments involving crimes other than violations of the Federal Narcotic Statutes.

MOTION FOR SEVERENCE

17. Even if the Court were to grant the motion of the defendant YOUNG for a dismissal of the First Count of the indictment against him, namely the conspiracy Count, it is respectfully submitted that his motion for severence should be granted. The defendants ONG and WONG are named as defendants in an indictment presently pending in the Supreme Court of the State of New York for similar acts in that it is alleged

that they, with others, made bribery payments to Police Officers attached to the Squad of Special Prosecutor NADJARI.

18. Your deponent has been informed by DANIEL MARKEWICH, ESQ., attorney for the defendant ONG, that it is the intention of MR. MARKEWICH in the trial of the Federal indictment against the defendant ONG to make reference to the aforementioned State charges against his client upon the theory that they are inextricably intertwined and that both might be likened to a common conspiracy between State and Federal Agents to entrap the defendant ONG. That this would be prejudicial to your deponent's client YOUNG is self-evident. Further prejudice results from the fact that on two or more occasions the Agents engaged ONG and WONG in conversations relating to the sale of narcotics. 19. Likewise, the defendant YOUNG would be prejudiced upon a trial with the co-defendants ONG and WONG by a playing of the taped conversations had between ONG and WONG both with Federal Agents GRANELLI and KIBBLE in view of their many derogatory remarks concerning the defendant YOUNG and in one place the statement by the defendant WONG to the effect that the defendant YOUNG was "cheating" the Federal Agents in that he allegedly was receiving $440. for each payment of $200. While these are not in the true sense "Bruton statements" in that they were made prior to the arrest of the defendants ONG and WONG, they are, in fact, a denial of the Constitutional Rights afforded the defendant YOUNG under that portion of the Fifth Amendment concerning his right to due process of law as well as being in deprivation of his right "to be confronted with the witnesses against him" afforded him under the Sixth Amendment of the Constitution of the United States.

20. While your deponent is aware of the Federal Rules of

Criminal Procedure providing for the Joinder of Offenses and Defenses under Rule 8 and the Joinder of Trial of Indictments under Rule 18, he respectfully submits that the prejudice to the defendant YOUNG, if he were forced to proceed to trial with the co-defendants ONG, WONG and HOM, is so overwhelming as to far out-weigh any benefits that might result from a joint and single trial under Rule 8.

WHEREFORE, your deponent respectfully prays that Count One of the within indictment be dismissed as to the defendant YOUNG and that, whether or not that portion of the within motion be granted by the Court, that the trial of the defendant YOUNG, in the interest of justice, be severed from the trial of his co-defendants, for all of which no prior application has been made.

Gilbert S. Rosenthal

GILBERT S. ROSENTHAL

Sworn to before me this
10th day of March, 1975.

WILLIAM C. HEUMAN
Notary Public, State of New York
No. 60
Qualified in West County
Term Expires March 30, 1975

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

-v-

ALBERT YOUNG, et anos.,

Defendants.

----------X

AFFIDAVIT

Docket No. 74Cr. 1127

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ALBERT YOUNG, being duly sworn, deposes and says:

1. I am one of the defendants herein. I am 70 years of age and have never previously been convicted of any crime or offense.

2. I have read the foregoing affidavit of my lawyer, GILBERT S. ROSENTHAL, ESQ., and I have had same read to me in the Chinese language.

3. Although I have not as yet read or seen the transcripts of conversations between my co-defendants ONG and WONG and the Federal Agents GRANELLI and KIBBLE, I understand that my attorney has, and I assume that the analysis that he has made of them is true and correct.

4. I understand from my lawyer that if I were to be tried jointly with ONG and WONG many bad things that they said about me in talking with Agents GRANELLI and KIBBLE would be presented before the jury without me or my lawyer having any chance or opportunity to cross-examine ONG and WONG.

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5. I say without any reservations that I never conspired with or entered into any conspiracy with any of the co-defendants to commit the crime of bribery of Federal Agents and that I find myself in my present predicament because of having stupidly permitted myself to be entrapped by the Federal Agents.

WHEREFORE, I respectfully join in the prayer of my lawyer that the conspiracy Count of the indictment be dismissed and that I be granted a separate trial from that of the co-defendants.

Albert Young

ALBERT YOUNG

Sworn to before me this
10th day of March, 1975.

WILLIAM C. HERMAN
Notary Public, State of New York
No. 60-[illegible]
Qualified in [illegible] County
Term Expires March 30, 1975

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Approved:

EDWARD J. KURIANSKY
Assistant United States Attorney

74-926

Before: HONORABLE HAROLD J. RABY
United States Magistrate
Southern District of New York

UNITED STATES OF AMERICA : COMPLAINT

-v- : Violation of 18 U.S.C. §§ 201(b) and 2.

ALBERT YOUNG, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young, :

Defendant.

SOUTHERN DISTRICT OF NEW YORK, ss.:

BOYD B. HENRY, JR., being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and charges as follows:

From on or about December 12, 1973, up to and including the date of the filing of this complaint, in the Southern District of New York, ALBERT YOUNG, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young, the defendant, unlawfully, wilfully and knowingly did, directly and indirectly, corruptly give, offer and promise things of value, to wit, a total sum of approximately $5,000.00 in United States currency, to public officials of the United States, namely, Lawrence V. Cranelli and James E. Kibble, Criminal Investigators of the Immigration and Naturalization Service, United States Department of Justice, with intent: (a) to influence official acts; (b) to influence said public officials to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States; and (c) to induce said public officials to do and to omit to do acts in violation of their lawful duties, to wit, to influence and induce said public officials to cease conducting official Area Control search operations for illegal aliens at the site of the defendant's illegal gambling business at #1 Division Street/ #1 Catherine Street, New York, New York and/or to provide the defendant in advance with confidential information concerning such proposed operations in violation of their lawful duties.

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The bases for deponent's knowledge and for the foregoing charge are, in part, as follows:

An investigation conducted in the course of his official duties, including:

(1) Statements by Investigators Granelli and Kibble that they have received the above-mentioned bribe moneys from the defendant;

(2) Tape recordings of conversations between Investigators Granelli and Kibble and the defendant, in which the defendant admits offering and paying bribe moneys to these officials;

(3) Receipt by your deponent for safekeeping of the bribe moneys in question from Investigators Granelli and Kibble.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendant and that he may be arrested and imprisoned, or bailed, as the case may be.

BOYD B. HENRY, JR.

Sworn to before me this

18th day of July, 1974.

Southern District of New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- :

74 Cr. 1127 (CLB)

ALBERT YOUNG, et al., :

Defendants. :

- x

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT YOUNG'S MOTION FOR DISMISSAL OF THE CONSPIRACY COUNT AND SEVERANCE

The Government respectfully submits this memorandum in opposition to the defendant Albert Young's motion, dated March 10, 1975, for dismissal of Count One (the conspiracy count) and/or severance of his trial from that of his co-defendants Benny Ong, Wong Wah and Tom Hom. The Government submits that the defendant Young is properly joined in the conspiracy count on the face of the indictment and that any motion for dismissal thereof is premature and should await the presentation of the Government's proof at trial. Moreover,

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the evidence to be adduced at trial, a substantial portion of which has already been disclosed to defendants (i.e. tape recordings of defendants' conversations with the undercover agents and draft transcripts thereof), makes it clear that the defendant Young associated himself with an ongoing conspiracy, initiated by his co-defendants, to bribe immigration officers and, like his co-defendants, reaped the benefits of said conspiracy by securing protection for his illegal gambling house from INS searches for illegal aliens.

Statement of Facts

On November 27, 1974, Indictment 74 Cr. 1127 was filed, in 99 counts, charging the defendant Young and co-defendants Ong, Wah and Hom with one count of conspiracy to bribe public officials, to wit, INS Criminal Investigators Granelli and Kibble, in violation of Title 18, United States Code, Section 371, and charging each defendant with multiple substantive counts of bribery, in violation of Title 18, United States Code, Section 201(b).

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The Government's proof at trial, which will consist primarily of the testimony of Agents Granelli and Kibble together with corroborative tape recordings of their conversations with all four defendants, will establish, at least in part, the following as to the defendant Albert Young:

In mid-October, 1973, and continuing into November, 1973, the defendant Ong approached INS investigators Granelli and Kibble and offered them money on behalf of his own gambling house and several others in the Chinatown area in return for the agents' ceasing, or notifying him in advance of, proposed INS searches for illegal aliens patronizing the gambling houses. During these initial meetings, Ong specifically stated that he was speaking on behalf of his own gambling house at 9 Pell Street, the defendant Wah's house at 58 East Broadway and the defendant Young's house at 1 Catherine Street, and would pay the agents $600 per week ($200 each) for the three houses. Thereafter, on November 15, 1973, the defendants Ong and Wah began making $200 weekly payments to Granelli

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and Kibble and further indicated that while Albert Young's Catherine Street club still wanted to join in the bribery scheme, Young did not want to deal with the agents through Ong. In this and a subsequent conversation, Ong advised the agents to speak directly with Young, and that if necessary he (Ong) would effect an introduction between Young and the agents. In a December 3, 1973 taped conversation, Ong indicated that Wah and Young were partners in the Catherine Street gambling house, and that since they (Wah and Young) did not get along well, Wah had asked Ong to talk to Young about joining the bribery plan. Ong said he was not inclined to help Young because Young had previously been delinquent in repaying him $5,000 that Ong had advanced on Young's behalf to pay off the police. Shortly thereafter, on December 12, 1973, the defendant Young himself approached the investigators and asked to be cut in on the bribery scheme. Young said he was "losing face" because INS continued to arrest aliens in his gambling club. Young then stated

that he had learned from the defendant Ong of his payoff agreement with the agents and that he (Young) wanted the same deal. Young said that he would pay Granelli and Kibble the same amount they received from Ong (although he did not want Ong to know about it) in return for their not searching his club for illegal aliens. On the following day, December 13, 1973, Young again met with the investigators and made the first of many $200 weekly (or $400 biweekly) payments he would make over the next eight months. Immediately thereafter, on December 19, 1973, Ong and Wah advised Granelli and Kibble that they (Ong and Wah) were aware that Young was now "doing business" with the agents and even knew that Young was overcharging the gambling house on the transaction. In the ensuing months, Ong, Wah and Young, as well as the defendant Hom, continued to make regular bribe payments in the very same amounts, to the very same agents, often on the very same day, and for precisely the same purpose. Later on, Ong would even advise the

agents when Young's house was open or closed so they would know whether or not to expect a payment from Young.

The foregoing facts, representing a portion of the evidence to be presented by the Government at trial, clearly establish a sound basis for the conspiracy charge in the indictment and reveal the meritless nature of defendant Young's motion for dismissal and severance.

ARGUMENT

The Conspiracy Count is Sufficient On Its Face, and Defendant Young's Motion to Dismiss Must Await The Government's Proof at Trial.

The test for the sufficiency of an indictment is "whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.'" Hagner v. United States, 285 U.S. 427, 431

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(1932); Berger v. United States, 295 U.S. 78, 82 (1935); United States v. Salazar, 485 F.2d 1272, 1277 (2d Cir. 1973), cert. denied, 415 U.S. 985 (1974); United States v. Bowe, 360 F.2d 1, 8 (2d Cir. 1966); Rule 7(c), F. R. Cr. P. As was stated in United States v. Wilson, 356 F. Supp. 463, 464 (D. Md. 1973), "Upon a motion to dismiss a conspiracy indictment, the inquiry is whether the charge includes the three elements of the crime: an agreement, the unlawful object, and an overt act." All of these elements are present on the face of the instant indictment, which adequately informs the defendant Young of the charge against him and his co-defendants and enables him to prepare his defense and plead double jeopardy should it thereafter become necessary. The arguments advanced by Young in support of his motion for dismissal of the conspiracy count should therefore more properly be directed to the sufficiency of the evidence presented at trial, not the validity of the indictment.

Notwithstanding the Prematurity Of Defendant's Motion to Dismiss, The Government's Offer of Proof Set Forth Above Clearly Demonstrates The Sufficiency of the Conspiracy Charge Against The Defendant Young.

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Defendant Young argues on the basis of Kotteakos v. United States, 328 U.S. 950 (1946) that he was not part of a single overall conspiracy with his co-defendants to bribe Investigators Granelli and Kibble, but rather was involved in a separate bribery scheme of his own. Not only has the defendant ignored recent Second Circuit cases (cited by the Court at oral argument) which interpret and significantly restrict the Kotteakos rationale, see e.g., United States v. Tramunti, No. 74-1550 (2d Cir. March 7, 1975), slip op. 2107, 2136; United States v. Mallah, No. 74-1327 (2d Cir. Sept. 23, 1974), slip op. 5475, 5496-97; United States v. Sperling, No. 73-2363 (2d Cir. Oct. 10, 1974), slip op. 5637; United States v. Arroyo, 494 F.2d 1316 (2d Cir.), cert. denied, 43 U.S.L.W. 3208 (Oct. 15, 1974); United States v. Bynum, 485 F.2d 490, 495 (2d Cir. 1973), vacated and remanded on other grounds, 417 U.S. 903 (1974); United States v. Cirillo, 468 F.2d 1233 (2d Cir. 1972), cert. denied, 410 U.S. 989 (1973), but has also failed to recognize that, unlike

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the instant case, Kotteakos was one in which the "numerous participants (32) in the different schemes (8) were, on the whole, except for one, different persons who did not know or have anything to do with one another." 328 U.S. at 753. Here, the defendant Young well knew his co-defendants and acted with full knowledge of their ongoing scheme to bribe immigration officers. The defendant Ong had originally approached the agents on Young's behalf. Young and the defendant Wah were partners in the same gambling house for which Young was paying protection money, and, most importantly, when Young himself approached the agents with his illicit offer, he demonstrated complete familiarity with his co-defendants' ongoing corrupt scheme and asked to be let in on it on the very same terms and for precisely the same purpose.

What was said in Blumenthal v. United States, 332 U.S. 539, 558 (1947) is equally applicable here: "The case therefore is very different from the facts admitted to exist in the Kotteakos case. Apart from

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the much larger number of agreements there involved (in Kotteakos), no two of those agreements were tied together as stages in the formation of a larger all-inclusive combination, all directed to achieving a single unlawful end or result." Here, each conspirator was interested in, and aware of his co-conspirators' negotiations with the agents. Here, each conspirator, directly or indirectly, assisted his co-conspirators in corrupting the very same government officials and then benefited therefrom. Here, as in Blumenthal, "All (conspirators) knew of and joined in the overriding scheme . . . All by reason of their knowledge of the plan's general scope, if not its exact limits, sought a common end," 332 U.S. at 559, that is, the corruption of Investigators Granelli and Kibble for the specific benefit of each individual gambling house and the general welfare of illegal gambling in Chinatown.*

* The fact that Young's co-conspirators occasionally passed disparaging remarks about him in no way negates the defendants' overall commonality of purpose. Indeed, many of the remarks by Ong and Wah, although perhaps personally unflattering to Young, were specifically intended to further the ultimate aims of the conspiracy - that is, by encouraging the agents to deal with Young, by putting the agents at

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In this regard, and directly on point, is a Canadian case abstracted at length in the well-known textbook of Paulsen and Kadish, Criminal Law And Its Processes (1962). In Rex v. Meyrick and Ribuffi, 21 Crim. App. R. 94, 101-2 (1929), a copy of which is annexed hereto as Exhibit A, the Canadian Appellate court sustained the conviction of two night club proprietors of different night clubs for conspiring to

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* Footnote cont'd. from preceding page.
ease with assurances about Young's corrupt proclivities, and by advising the agents to deal cautiously with Young and providing them with inside information about him, thereby pleasing the agents and insuring the overall success of the scheme. This very issue was raised and rejected by the Second Circuit earlier this month in United States v. Tramunti, supra. Appellants there argued that evidence of dislike among certain conspirators ("that guy is nasty") and a disinclination to deal with certain others revealed the existence of two conspiracies and a lack of mutual relationship. The Court held that this evidence "goes only to weight." Id. slip op. at 2138, n. 23. It further found that evidence of one conspirator cheating another (as Ong alleges Young to have done) is indicative only that "in this business honorable dealing with one's associates is not the highest ethic." Id. See also United States v. Mallah, supra, slip op. at 5487 (where feuding conspirators participated together indirectly in a heroin sale, held to be a transaction in furtherance of the conspiracy).

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bribe a police officer to overlook violations of the liquor laws. On facts less compelling than those in the instant case, the court found a common design amongst the defendants to corrupt the police force, even though each proprietor was primarily interested in his own establishment and there was no evidence of direct communication between them.

Similar indictments have been upheld in Monroe v. United States, 234 F.2d 49 (D.C. Cir.), cert. denied, 352 U.S. 872, 873, reh. denied, 352 U.S. 937 (1956) (as in the instant case, a conspiracy among various gamblers and police officers to bribe a police lieutenant, who posed as corrupt in order to uncover the scheme) and United States v. Cogan, 266 F. Supp. 376, 377-378 (S.D.N.Y. 1967) (a conspiracy among eight Internal Revenue agents and two private individuals to pay and receive bribes), where Judge Cooper discussed the policy underpinning such a conspiracy count:

> "In the instant case, for example, if each of the eight Internal Revenue Agents entered into the conspiratorial agreement

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> and had knowledge of the participation by the others, they would probably be more confident in carrying forward their illegal acts, more likely to continue their illegal deportment and encouraged to rationalize their actions. Thus, to an increased degree their combined efforts become more emphatically inimical to the safety of the commonweal. It follows that the agreement itself carries a criminal stigma."

Accordingly, the Government respectfully submits that the defendant Young is properly joined in the conspiracy count and that his motion to dismiss should, in all respects, be denied.

Defendant Young's Motion For Severance Is Without Merit

Clearly, since the offenses charged are of the same or similar character, and the defendants are alleged to have participated in the same conspiracy, the joinder of offenses and defendants in the indictment is permissible under Rule 8, F.R. Cr. P. Severance of offenses and defendants, however, is discretionary with the trial court, Rule 14, F. R.Cr. P; Opper v. United States, 348 U.S. 84, 95 (1954). Nevertheless, the "burden is upon the movant to come forward with facts which demonstrate

that he will be prejudiced by a joint trial so that it would in effect be a denial of a fair trial altogether." United States v. Wolfson, 289 F. Supp. 903, 908 (S.D.N.Y. 1968); United States v. Wallace, 272 F. Supp. 838 (S.D.N.Y. 1967).

Generally, where the indictment charges a conspiracy, the rule is that persons jointly indicted should be tried together. United States v. Echeles, 352 F.2d 892, 896 (7th Cir. 1965); United States v. Lebron, 222 F.2d 531, 535 (2d Cir.), cert. denied, 350 U.S. 876 (1955). And where proof of the charges against the defendants may be proved by the same evidence resulting from the same or a similar series of acts, severance should not be granted except for the most compelling reasons, United States v. Echeles, supra; United States v. Lebron, supra; United States v. Wolfson, supra, which are not present here. "Not to be forgotten among the considerations affecting the exercise of the trial court's discretion is the possible prejudice to the Government which might result

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from a separate trial." United States v. Kahn, 381 F.2d 824, 838 (7th Cir.), cert. denied, 389 U.S. 1015 (1967), reh. denied, 392 U.S. 948 (1968). Here, a severance of Young's trial would unnecessarily compel the Government and the Court to conduct two lengthy trials involving substantially the same evidence and precisely the same witnesses. Since the defendant Young specifically adopted his co-conspirators' bribery agreement with the agents as his own and since each member of a conspiracy is bound by the acts and declarations of his co-conspirators in furtherance of the conspiracy, the Government would be entitled, indeed, required, at any separate trial of Young, to develop fully the origin and nature of the corrupt relationship existing between Young's co-defendants and the agents.

Defendant Young's hypothetical claims of prejudice simply do not meet the heavy burden imposed upon him to justify a severance. As the Second Circuit recently stated, in upholding the denial of a severance, "it is not enough for appellant simply to show he might

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have a better chance for acquittal in a new trial. He must show substantial prejudice and that the trial judge abused his discretion in refusing to sever." United States v. Papadakis, No. 74-1847 (2d Cir. Jan. 10, 1975) slip op. 1231, 1254-1255. No such substantial prejudice has been shown here. The defendant Young speculates that his co-defendant Ong may, in an attempt to make out an entrapment defense, refer to the fact that he is also under indictment in state court for bribing police officers. That such evidence would be prejudicial to the defendant Young, he asserts, is "self-evident". This is by no means the case. Indeed, were the defendant Ong to establish a persuasive entrapment defense, it might well inure to the benefit of all defendants, including Young. In any event, as the Court stated in United States v. DeSapio, 435 F.2d 272, 280 (2d Cir. 1970), cert. denied, 402 U.S. 999, reh. denied, 403 U.S. 941 (1971), in rejecting a strikingly similar claim of prejudice based upon evidence of a co-defendant's participation in an earlier conspiracy,

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'it is no abuse of discretion to deny a severance merely because of the remote possibility that the jury might draw so irrational an inference." Here, as in DeSapio, proof that a co-defendant allegedly participated in another bribery scheme would not have "the slightest tendency to prove" the defendant Young's participation in the conspiracy charged in this indictment. Id..

In addition, it should be pointed out that at this early stage, prior to trial, it is not at all certain that the defendant Ong will ultimately choose to introduce evidence of his state indictment or, if he does so choose, that he will be permitted to do so. Should this problem ever in fact arise, it can be ruled on at the appropriate time on the basis of a complete record. "Since it is the continuing obligation of the trial court to protect the defendants' right to a fair trial and to grant a severance should prejudice become apparent during the course of the trial," the denial of defendant's motion at the present time

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would "not foreclose (its) renewal at trial for good cause." United States v. Wolfson, supra, 289 F. Supp. at 910; Schaffer v. United States, 362 U.S. 511, 516 (1960).

Finally, defendant Young's claim that he will be prejudiced at a joint trial by virtue of his co-defendants' derogatory remarks about him has been discussed previously. See pages 10-11, footnote, infra. However, it should be noted that even a separate trial would not necessarily insulate Young from his co-conspirators' declarations if it can be shown, as the Government submits it will, that they were made in furtherance of an overall conspiracy of which Young was a member.

Thus, it is clear that a joint trial would in no way infringe the defendant Young's right to a fundamentally fair trial. Young's assertions of potential prejudice are entirely speculative and, as was said in DeLucia, supra, "take insufficient account of the intelligence and conscientiousness of the jury, the effective efforts of the judge to keep it on the beam, the

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skill of defense counsel, and the requirement under F.R.Cr. P. 14 that the defendant demonstrate substantial prejudice from a joint trial, not simply 'a better chance of acquittal' at a separate one." 435 F.2d at 280.

CONCLUSION

Defendant Young's motion for dismissal of the conspiracy count and/or severance of his trial from that of his co-defendants should, in all respects, be denied.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

EDWARD J. KURIANSKY
Assistant United States Attorney
Of Counsel.

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offenses later committed as a part of the conspiracy. 18 Cal. App. 2d 7, 21-22, 177 P.2d at 317.

REX v. MEYRICK AND RIBUFFI, 21 Crim. App. R. 94 (1929). Appellants, two night club proprietors of different night clubs, were convicted of conspiring together and with ex-Sergeant Goddard, a police officer, "to contravene the provisions of the Licensing Acts by the unlawful sale of intoxicating liquors and to effect a public mischief by obstructing the police of the Metropolis in the execution of their public duty and by corrupting officers of that force . . . and thereby to prevent the due administration of the law and prevent the course of public justice." The evidence disclosed that each of the night club proprietors had bribed Goddard to overlook infractions of the liquor laws in his own respective establishment. The court rejected the contention that the evidence disclosed separate conspiracies between each defendant and Goddard but failed to disclose a larger conspiracy encompassing them all. The court found the common design of all three in the mutual object of effecting public mischief by corrupting the police force, even though the direct interest of each proprietor was in having offenses in his own establishment overlooked and not those in any other establishment, and even though there was no evidence of communication between the two proprietors. The court stated: "It seems to us that it was clearly put to the jury that in order to find these persons, or any of them, guilty of the conspiracy charge in the first count of this indictment, it was necessary that the prosecution should establish, not indeed that the individuals were in direct communication with each other, or directly consulting together, but that they entered into an agreement with a common design. Such agreements may be made in various ways. There may be one person, to adopt the metaphor of counsel, round whom the rest revolve. The metaphor is the metaphor of the centre of a circle and the circumference. There may be a conspiracy of another kind, where the metaphor would be rather that of a chain; A communicates with B, B with C, C with D, and so on to the end of the list of conspirators. What has to be ascertained is always the same matter: is it true to say, . . . that the acts of the accused were done in pursuance of a criminal purpose held in common between them?" P. 101-102. See R. v. Hammersley, Heath and Bellson, 42 Crim. App. R. 207 (1957), where Meyrick and Ribuffi is approved and applied.

BRAVERMAN v. UNITED STATES

Supreme Court of the United States, 1942
317 U.S. 49, 63 Sup. Ct. 99, 87 L. Ed. 23

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

The [question] for decision [is]: Whether a conviction upon the several counts of an indictment, each charging conspiracy to violate a different provision of the Internal Revenue laws, where the jury's verdict is supported by evidence of but a single conspiracy, will sustain a sentence of

Exhibit A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

74 Cr. 1127 (CLB)

ALBERT YOUNG, et al.,

Defendants.

----------X

REPLY MEMORANDUM OF DEFENDANT, ALBERT YOUNG, IN SUPPORT OF MOTION FORDISMISSAL OF THE CONSPIRACY COUNT AND/OR SEVERANCE

BACKGROUND

The defendant, ALBERT YOUNG, was arrested on or about July 17, 1974, on the same day that his present co-defendants, BENNIE ONG and WONG WAH, were arrested.

At the time of arraignment before the United States Magistrate, each of the aforementioned were arraigned upon individual complaints charging each of them with violation of Section 201 (b) of Title 18 USC. A copy of this complaint was attached to the moving papers of the defendant YOUNG as "Schedule A" thereof.

Subsequently, some four months later the instant indictment was filed and Count One thereof charges defendant YOUNG, together with the defendants ONG, WONG and HOM, under Count One, with the crime of conspiracy to violate Section 201 (b) of Title 18 USC (bribery),

J1

and some ninety-eight substantive Counts, the last twenty-one of which apply to the defendant YOUNG.

Discovery has been granted the attorney for the defendant YOUNG and resulted in his reading raw transcripts of taped conversations had between I. N. S. Agents KIBBLE and GRANELLI and the defendant YOUNG and his co-defendants. Significantly it is the claim of the Government that the time when it is alleged an agreement was reached between Young and the I. N. S. Agents, no recording was made of that conversation.

Prior to December 12, 1973, the date when it is alleged YOUNG first spoke to the I. N. S. Agents (p. 4 of Government's Memorandum), there had been several recorded conversations between Agents GRANELLI and KIBBLE and the co-defendants ONG and WONG in which reference was made to the defendant YOUNG. These conversations will be refered to in more detail infra.

According to the Government's Memorandum, it is the claim that the co-defendant ONG from mid-October and continuing into November, 1973, had represented to Agents GRANELLI and KIBBLE that he was speaking in behalf of himself and the alleged gambling houses [illegible]aged by WONG and YOUNG at 58 East Broadway and 1 Catherine Street [illegible]espectively. Again we find none of these alleged "preliminary negotiating" conversations recorded.

The indictment, in its introductory statement, paragraphs 1 through 4 thereof, recite that each of the named defendants were managers of "an illegal gambling business" conducted at four separate and distinct addresses and fails to allege any common interest.

J2

financial or otherwise, between any of the places or businesses referred to.

ARGUMENT

The Government argues in its Memorandum that Count One of the indictment is sufficient on its face and that therefore should not be dismissed in respect to the defendant YOUNG.

This argument fails to take into consideration the allegations contained within paragraphs 1 to 4 of the indictment in which each of the defendants are described as managers of individual "illegal gambling businesses" located at various separate addresses in the City of New York and inferentially operated for and in behalf of (at least in respect to ONG, WONG and YOUNG) individual, separate and distinct "Chinese Benevolent Associations", to wit: the "Hip Sing Association, the Tai Look Association and the Tsung Tsin Association", respectively. The indictment fails to contain any allegation of any relationship between any of the afore-mentioned Associations.

The various cases decided in the Supreme Court of the United States and cited in the Government's Memorandum were all decided prior to the amendment to Rule 16 of the Federal Rules of Criminal Procedure wherein and whereby the Discovery granted defendants were greatly enlarged. The result of the amendment of Rule 16 places a defendant in a position where he and his attorney can challenge properly the bare conclusions of fact and law made by the Government in an indictment.

J3

In the instant case this discovery has disclosed that rather than joining in conspiracy (if in fact one existed) YOUNG explicitly and in no uncertain terms advised Agents GRANELLI and KIBBLE that any transaction he might have with them was to be strictly between the Agents and himself and not related to or told to the co-defendants or anybody else. For instance, on page 12 of the rough transcript of the conversation allegedly had on December 13, 1973, YOUNG is reported as saying:

"DON'T TALK JIMMY, DON'T TALK BENNIE".

and KIBBLE allegedly replied:

"WE DON'T TELL ANYBODY".

Again at page 14 of the same transcript we find GRANELLI allegedly saying:

"SOME PEOPLE LIKE TO TALK - WE DON'T KNOW".

and YOUNG allegedly replied:

"THAT'S THE REASON I TELL YOU - I'M WARNING YOU NOW - DON'T MENTION THIS TO NOBODY - THAT'S ALL".

In the rough transcript of a conversation allegedly had on December 3, 1973, between ONG, WONG, KIBBLE and GRANELLI, we find the following at page 5:

ONG: "WHAT ABOUT THAT -- ah -- CATHERINE STREET?"

KIBBLE: "WE WERE OVER THERE THE OTHER NIGHT. WE GOT TWO. WHO'S AL - ALBERT ? HE CAME - CAME UP TO SEE US THE OTHER NIGHT - HE'S A - HE'S A NUT."

ONG: "HE'S NO GOOD".

J4

GRANELLI: "HE TALKS NONSENSE, THAT GUY HE"

ONG: "HE'S NO GOOD. YEAH, YEAH, YEAH, YEAH, HE'S NO GOOD."

GRANELLI: "WHY'S HE NO GOOD"?

ONG: "HE DON'T TALK."

Again at page 7 of the transcript of the same conversation we find the following:

ONG: "YEA, GO TO CATHERINE STREET - KEEP GOING KEEP KEEP HITTING CATHERINE STREET". *** YOU KNOW THE OTHER GUY - HE SAID 'BENNIE TALK TO HIM', "I SAID, 'F--K HIM'" "I SAID I DON'T LIKE ALBERT' ".

The transcripts are replete with statements in a similar vein made by either ONG or WONG concerning the defendant ALBERT YOUNG and by the defendant YOUNG warning and agreeing with GRANELLI and KIBBLE that any business or arrangements made between YOUNG and KIBBLE and GRANELLI were strictly between the three of them and not to be discussed with the people that he now finds as co-defendants.

It is respectfully submitted that it is not sufficient for the Government to satisfy the "form" by preparing an indictment that meets on its face the legal requirements for proceeding in respect to a Conspiracy Charge when the Government knows that the factual background defeats and is contra to the allegations contained within the Conspiracy Count. By doing this the Government flies in the face of contradicting the decision of the United States Court of Appeals for the Second Circuit. In U.S. v. Branker 395 F. 2d 881 the Trial Judge, the Honorable INZER B. WYATT, D.J., dismissed the Conspiracy

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Count at the close of the Government's case and permitted the substantive Counts, some eighty (80) odd in number, to go to the jury. In reversing the convictions of four of the six defendants appealing, the Court said at page 889:

> "It is regrettable that the trial court had to confront substantial motions for severances after five weeks of trial. Since the testimony of Mrs. Neely provided no surprises, counsel for the government must surely have known in advance of trial that the chances of proving the conspiracy charged in the indictment were very slim. Yet the conspiracy count provided the only justification for the joinder of the eight defendants. If the prejudice of joint trial is to be eliminated without the waste of time and energy which results from a joinder which is declared improper in the midst of trial, or, as here, on appeal, we must rely on the responsibility and good judgment of the prosecutors." (Emphasis supplied).

It is respectfully submitted that in the instant case it is not necessary that this Honorable Court "rely on the responsibility and good judgment of the prosecutors" since it is demonstrable prior to trial that the factual situation does not justify the Conspiracy Count.

At page 11 of the Government's Memorandum and in Exhibit A attached thereto, we are treated to the unusual approach of citing a decision from another Country, namely Canada.

Counsel for the defendant YOUNG does not pretend to be familiar with either the substantive or procedural Law of Canada nor is there any representation made by the Government that the preparer of their Memorandum pretends to have such knowledge. That this may very well be vastly different from that of the United States although we are close geographically, becomes apparent when one reads the decision of our Court of Appeals for the Second Circuit

J6

in United States ex Rel Bloomenfeld v. Gengler 507 F. 2d 925 (December, 1974).

In that case our Court of Appeals affirmed the dismissal of a Writ of Habeas Corpus in connection with an extradition proceeding where two American citizens had been acquitted after trial in Canada and the Crown appealed and the Appellate Court not only reversed the acquittal, but conducted a trial in absentia and found the parties in question guilty of violation of the Laws of Canada in respect to narcotics. That such a procedure, abhorrent to our system of jurisprudence could take place in an English speaking Country is incredible to counsel for the defendant YOUNG and would not be believed except for his having read the foregoing opinion of our Court of Appeals for the Second Circuit.

In United States v. Bynum 485 F 2d 490 cited by the Government to sustain their charge of conspiracy, the Court of Appeals in its opinion at pages 495 and 496 enumerated with great particularity how each of the defendants, although operating at different levels, performed duties that furthered the overall venture. Nothing can be further from the truth in the instant case. Likewise, the cases of the United States v. Tramunti, slip op. 2107, United States v. Mallah, slip op. 5473 and United States v. Sperling, slip op. 5637 together with all the other cases cited referred to narcotic conspiracy charges.

SEVERANCE

The Government admits that the only reason for the joinder of the defendant YOUNG with the co-defendants in the ninety-nine Count

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(99 Count) indictment is Count One - the Conspiracy Count.

It is respectfully submitted that it is crystal clear from the factual situation presented by the tapes, etc., and the allegations contained within the complaint in the Magistrate's Court and in the introduction paragraphs 1 to 4 of the indictment herein that a trial would of necessity result in a dismissal of the Conspiracy Count by the Trial Judge.

As pointed out in U.S. v. Branker, supra, it would become incumbent upon the Trial Court to sever the defendant YOUNG from the trial of the co-defendants because of the prejudicial evidence that would be generated by the hearsay testimony admissible under the Conspiracy Count and as stated by the Court of Appeals in United States v. Kelly 349 F. 2d 720, 758 (Second Circuit [1965]) "no amount of cautionary instructions could have undone the harm".

Admittedly, the motion of the defendant YOUNG for a severance is addressed to the sound discretion of the Court.

The "earlier conspiracy" of the co-defendant referred to in United States v. DeSapio 435 F. 2d 272, 280 (Second Circuit [1970]) concerned itself with a co-defendant who had been convicted.

While it is true that it is the duty of the Trial Court to grant a severance should prejudice become apparent during the course of the trial, it is respectfully submitted that it is likewise the duty of the prosecutors to be fair to the defendant YOUNG and not attempt to obtain a conviction by the inclusion of a baseless Conspiracy Count hoping that the prejudicial matter that would be admissable against the co-defendants under the Conspiracy Count would rub off on the defendant YOUNG.

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As pointed out by the Court of Appeals in U.S. v. Branker supra, the subjecting of all of the defendants to the trial of an eighty (80) Count indictment where the participation of many of them varied from two (2) Counts to twenty-one (21) Counts (in the instant case the alleged participation of YOUNG is twenty-two [22] Counts out of ninety-nine [99]) was so prejudicial as to require the reversal of the convictions of four defendants. The Court said at page 888:

> "Apart from the prejudice inherent in any mass trial, a defendant in a trial in which the conspiracy count has been dismissed is likely to be prejudiced in defending the charges in the substantive counts by evidence, particularly hearsay testimony, which was admissible on the conspiracy count but which could not have been used against him in a separate trial on the substantive counts. One of the most dramatic of the many examples of this in the record before us is Cooper's statement to Neely that he needed money because he was in the policy business with Charles Moore."

It is respectfully submitted that the defendant YOUNG has demonstrated that he would be prejudiced by a joint trial with the co-defendants and is entitled to the relief provided for under Rule 14 of the Federal Rules of Criminal Procedure. There is no cautionary warning that the Court could give the Trial Jury that would remove from the trial the prejudicial statements concerning the defendant YOUNG made by the co-defendants to the Government Agents during the course of their dealings with GRANELLI and KIBBLE.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT THE MOTION

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OF THE DEFENDANT YOUNG FOR A DISMISSAL OF THE CONSPIRACY COUNT AND A SEVERANCE OF HIS TRIAL FROM THAT OF HIS CO-DEFENDANTS SHOULD, IN ALL RESPECTS, BE GRANTED.

Respectfully submitted,

GILBERT S. ROSENTHAL
Attorney for the defendant,
ALBERT YOUNG
Office & P.O. Address
401 Broadway
New York, New York 10013
Tel: (212) 226-7971

Copy

U.S. DISTRICT COURT
FILED
JUN 26 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

-v-

BENNY ONG, a/k/a Benny Eng, a/k/a Hong Shew Ong, a/k/a Gai Shew Eng, a/k/a "Uncle Seven", WONG WAH, a/k/a Wah Wong, a/k/a Pit Wah Wong, TOM HOM, a/k/a Tom Hom, a/k/a Chu Ting Hom, a/k/a Chee Ting Hom, a/k/a Seu Hong Hom, a/k/a "Mr. Tom", and ALBERT YOUNG, a/k/a Albert Ming Young, a/k/a Young Ming, a/k/a Ting Choy Young, a/k/a Yuk Ming Young,

Defendants.

- -X

74 Cr. 1127-CLB

MEMORANDUM AND ORDER

[Motion by Albert Young]

#42672

Bricant, J.

By notice of motion dated March 11, 1975, defendant Young moves for an order dismissing Count One of the indictment, the conspiracy count, and for a separate trial, pursuant to Rule 14, F.R.Cr.P.

The indictment charges defendants with conspiracy [18 U.S.C. §371] and bribery [18 U.S.C. §201(b)] of United States Immigration and Naturalization Service investigators to induce the investigators not to search for illegal aliens at defendants' illegal gambling

K1

establishments. The enterprises of the conspirators were independently owned and operated, with the exception of one on Catherine Street which was owned jointly by defendants Wah and Young.

Two Immigration investigators were approached by defendant Ong in the Fall of 1973 with an offer of regular weekly payments to be made on behalf of himself and the other defendants. The investigators pretended to accept these bribes, and for approximately eight months, received payments from defendants Ong, Wah, Young and Hom. Counts Two through Ninety-Nine are substantive bribery counts, each count representing a payment said to have been made on a particular date by one or another of the defendants.

Through defendant Ong, Young met the two investigators and began paying them directly although defendants Ong and Wah knew the payments were being made.

Numerous tape recordings were made of conversations between the defendants and the investigators. Transcripts of these conversations were made available to the defendants. Defendant Young claims the tape recordings establish that no single overall conspiracy existed. [Kottek...

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328 U.S. 750 (1946)].

In Kotteakos, supra, defendants were convicted of a conspiracy to violate the National Housing Act, 12 U.S.C. §§1702, 1703, 1715, 1731. A single defendant, one Brown, assisted other defendants in the preparation and filing of fraudulent applications for loans to be insured by the Federal Housing Administration. The Court found at least eight separate conspiracies, rather than the single conspiracy charged, since there was nothing connecting the conspiracies except that defendant Brown prepared all the applications. There was no evidence that the members of one conspiracy knew the members of any other, or knew Brown was conspiring with any other group.

Properly, the Kotteakos doctrine has been given very limited application. Conspiracy convictions have been upheld when some members did not know each other, if the evidence showed the conspirators must have known, from the nature of the illegal activity, that the scheme depended on the efforts of a large number of participants. United States v. Tramunti, ___ F.2d ____ (2d Cir. March 7, 1975); United States v. Mallah, 503 F.2d 971 (2d Cir. 1974).

Any one of the defendants in this case might have

K3

attempted to bribe an officer of the Immigration and Naturalization Service, and the nature of that activity standing alone would not necessarily suggest a conspiracy. However, on the basis of defendant Young's interpretation of the contents of the tapes, and the Government's representations as to what the investigators' testimony will be, this case is clearly distinguishable from Kotteakos. Defendants Young and Wah were partners in the Catherine Street gambling operation. Defendant Ong's initial offer to the investigators was from a group of operators of gambling houses, including defendant Young. Young and his co-defendants knew who was paying protection money to the investigators in their behalf. Ong had introduced Young to the investigators. As was pointed out in United States v. Cogan, 266 F.Supp. 374, 377-78 (1967):

> "The general rational [sic] of the concept of conspiracy is that ' *** collective action toward an antisocial end involves a greater risk to society than individual action toward the same end.' Developments -- Criminal Conspiracy, 72 Harv.L.Rev. 920, 923-24 (1959). Likewise, when more than two people participate in a bribery scheme, the risk to society is correspondingly increased .... [F]or example, if each of the eight Internal Revenue agents entered into the conspiratorial agreement and had knowledge of the participation by the others, they would probably be more confident in carrying forward their illegal acts,

K4

more likely to continue their illegal deportment and encouraged to rationalize their actions. Thus, to an increased degree their combined efforts become more emphatically inimical to the safety of the commonweal. It follows that the agreement itself carries a criminal stigma."

Defendant Young contends that because he and his co-defendants disliked and mistrusted each other, and Young insisted on dealing with the investigators without the intercession of Ong, there could have been no conspiracy. In addition, defendant argues that each defendant was interested only in protecting his own gambling business, that there was no joint enterprise in which all defendants took part and from which all of the defendants profited.

Proving there was a direct monetary reward to each defendant from the bribery conspiracy is not part of the Government's burden at trial. Nevertheless, it is obvious that constant raids by Immigration investigators of gambling houses serving the Chinatown area would be likely to interfere with the entire gambling business. All of the defendants would profit from corruption of Immigration investigators, which would put a stop to the raids. For this reason, the fact that there may have been

(5) K5

internecine struggles among the defendants does not disprove participation in an overall bribery scheme which had as its object the general welfare of their industry. The question presented is for the jury.

Defendant's motion for a severance is directed to the discretion of the Court [Opper v. United States, 348 U.S. 84 (1954)], and should not be granted unless defendant demonstrates "that he will be prejudiced by a joint trial so that it would in effect be a denial of a fair trial altogether." United States v. Wolfson, 298 F.Supp. 903 (S.D.N.Y. 1968). In the absence of such a showing, defendants in a conspiracy case should be tried together, particularly when the evidence would be substantially the same at both trials. United States v. Lebron, 222 F.2d 531 (2d Cir. 1955), cert. denied 350 U.S. 876.

Defendant Young believes his co-defendants Ong and Wong will raise an entrapment defense. He suggests they (not the Government) will introduce evidence of bribery charges presently pending in the courts of the State of New York in connection with that defense. How such evidence could become admissible on co-defendants proffer of proof is not shown. Such admissions of

K6

similar criminal behavior (which a mere arrest is not), defendant urges, will prejudice his own defense. There is no merit to this argument, nor does it, alone, entitle the defendant to a separate trial as a matter of right [United States v. Echeles, 352 F.2d 892, 897 (7th Cir. 1965)], nor may the Court assume the jury would be unable or unwilling to consider such evidence for a limited purpose.

Defendant's further objection to being tried together with his co-defendants appears to be grounded on the prejudicial nature of the evidence the Government may introduce to prove the conspiracy charge. For example, defendant states that he will:

> "be prejudiced upon a trial with the co-defendants ONG and WONG by a playing of the taped conversations had between ONG and WONG ... with Federal Agents ... in view of their many derogatory remarks concerning the defendant YOUNG ...." (Affidavit of Gilbert S. Rosenthal, Esq., p.6, sworn to March 10, 1975).

The tapes, the testimony of the investigators, and the statements and acts of Young's co-conspirators in furtherance of the conspiracy will all be admissible at a joint or a separate trial. A separate trial of defendant Young under this indictment would serve no purpose other than forcing the Government to ~~try~~

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substantially the same case twice. Defendant has not shown that he will be unable to obtain a fair trial in a joint proceeding, and therefore, the defendant's "desire for a separate trial must yield to the public interest in avoiding unnecessary duplication and expense and in utilizing available facilities and personnel to best advantage toward assuring speedy trials for all of those accused." United States v. Wallace, 272 F.Supp. 838, 841 (S.D.N.Y. 1967).

Defendant's motion is in all respects denied.

So Ordered.

Dated: New York, New York
June 25, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

Respondent,

-against-

ALBERT YOUNG, WONG WAH, et al.,

Defendants.

----------x

MOTION TO SET ASIDE THE VERDICT AND FOR A NEW TRIAL

Docket No. 74 Cr. 1127 (C.D.B.)

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GILBERT S. ROSENTHAL, ESQ., the accompanying memorandum of law, and all the prior proceedings held herein, the undersigned will move this Court on January 5, 1976, before Hon. CHARLES D. BRIEANT, for an order pursuant to Rule 29 of the Federal Rules of Criminal Procedure to set aside the jury verdicts of November 28, 1975 as to both the Defendants Albert Young and Wong Wah and granting them new and separate trials, and for such other and further relief as this Court deems necessary and just.

Dated: New York, New York
December 29, 1975

Yours, etc.

Gilbert S. Rosenthal

GILBERT S. ROSENTHAL
Attorney for Defendant Young

WILLIAM C. HERMAN
Attorney for Defendant Wah
401 Broadway
New York, New York 10013
(212) 226-7971

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To: Clerk (Criminal Term)
District Court
Southern District of New York

HON. PAUL J. CURRAN
United States Attorney
for the Southern District
of New York
(A.U.S.A. Edward J. Kuriansky)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

Respondent,

-against-

ALBERT YOUNG, WONG WAH, et al.,

Defendants.

----------x

AFFIDAVIT
DOCKET NO. 74 Cr. 1127

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GILBERT S. ROSENTHAL, being duly sworn, deposes and says:

1. That he is an attorney at law, being duly admitted to practice law in the State of New York, and the within Court. That your deponent is the attorney for the Defendant, ALBERT YOUNG, and WILLIAM C. HERMAN of this firm is the attorney for the Defendant WONG WAH.

2. The gravamen of the indictment against the Defendants charged them with conspiring to bribe two Criminal Investigators of the Immigration and Naturalization Service in order to induce them not to search their respective premises for "illegal aliens." The indictment also charged the Defendants with substantive counts of bribery as well.

3. Before the commencement of the trial, Defendant Young in a written motion dated March 10, 1975 requested both a dismissal of the conspiracy count as against him and a severance of his trial from that

L3

of his three co-defendants. Young claimed that the indictment, the taped conversations, and the original complaint all demonstrated that the Government did not possess sufficient proof to sustain the conspiracy charge and further that his right to a fair trial would be impaired if forced to defend against both the conspiracy charges and the bribery charges at a joint trial.

4. In opposition to this motion, the Government essentially claimed that they did indeed possess sufficient evidence to sustain the conspiracy charge and maintained that Young's motions for a dismissal of that charge and a severance should be denied.

5. On June 25, 1975, this Court denied Defendant Young's motions for a dismissal of the conspiracy count and for a severance. The Court in denying this motion relied primarily upon the Government's representations that they had sufficient evidence of Young's participation in the conspiracy to bribe the Immigration officials.

6. However, at the close of the Government's case, this Court did dismiss the conspiracy count as against Defendant Young, but denied his motions for a mistrial and severance.

7. Defendant Young therefore claims that this Court, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, should now set aside the verdict and grant him a new trial on the following ground:

> That after dismissing the conspiracy count as to Defendant Young, this Court erred in refusing to grant his motion for a mistrial where the Government's inclusion of the Defendant in the conspiracy was not in good faith; where both this Court and the Government were put on notice before the commencement of the trial that the conspiracy

L4

charge as against Young was specious; and where the bulk of extraneous and prejudicial material that was admitted at the trial as a result of the conspiracy charge rendered it impossible for Young to receive a fair trial on the substantive charges.

8. Defendant Wong Wah also requests that this Court pursuant to Rule 29 of the Federal Rules of Criminal Procedure set aside the verdict as against him and grant him a new trial on the following ground:

That the improper curtailment of Defendant Wong Wah's cross-examination of the Government's chief witness requires the setting aside of the verdict and the granting of a new trial.

9. Since the facts in support of the Defendants' respective motions are set forth in the attached memorandum of law and since this Court has presided at the trial and is thus familiar with the facts of this case, the evidence adduced at the trial will not be set forth here.

WHEREFORE, it is respectfully requested that the verdicts as to the Defendants, Albert Young and Wong Wah, be set aside, and new and separate trials be granted as to each Defendant and for such other and further relief as this Court deems necessary and just.

Gilbert S. Rosenthal
GILBERT S. ROSENTHAL

Sworn to before me this 29th
day of December, 1975

Irving Shapiro
IRVING SHAPIRO
Notary Public, State of New York
No. 24-3687955
Qualified in Kings County
Cert. Filed in New York County

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

vs. : 74 Cr 1127

ALBERT YOUNG, WONG WAH, et al., :

Defendants. :

----------X

January 13, 1976
9:45 a.m.

Before: HON. CHARLES L. BRIEANT, JR.
District Judge

APPEARANCES

For the Government:

JOHN P. COONEY,
Assistant United States Attorney, and

EDWARD J. KURIANSKY, ESQ.

For the Defendant Young:

GILBERT S. ROSENTHAL, ESQ.

For the Defendant Wah:

WILLIAM C. HERMAN, ESQ.

Also Present:

Daniel Markewich, Esq.,
Attorney for Defendant Ong.

(Case called.)

MR. COONEY: The government is ready, your Honor.

THE COURT: Good morning, gentlemen.

MR. ROSENTHAL: The defendants are ready.

THE COURT: Are there any response papers, Mr. Cooney?

MR. COONEY: No, your Honor. We intend to respond orally.

THE COURT: All right. Mr. Rosenthal, you may be heard in support of the motion.

MR. ROSENTHAL: Well, in respect to the defendant Albert Young, your Honor, your Honor will recall that I did make an extensive motion at pre-trial for the dismissal of the conspiracy count and in the alternative for severance in respect to the defendant Young, and at that time I attempted to demonstrate to the best of my ability, which is limited to a certain extent by not having full knowledge of the government's case, that the conspiracy count was not proper in respect to Albert Young and in my humble opinion was not drawn in good faith in respect of the defendant Albert Young.

In opposition to that motion, the government through the United States Attorney's Office, represented

to the Court, both orally and in a memorandum -- I don't believe they submitted any affidavit; in fact, I failed to find any in my file -- that they had a good solid conspiracy case in respect to the defendant Albert Young.

Now, this is not a case where they were using outside witnesses or where some witness surprised them during the course of the trial by testifying contrarily to his either grand jury or pre-trial statement.

The only witnesses called by the government were government agents. The government had full knowledge of how far and how much the government agents had to say in respect to the defendant Albert Young, in respect to the conspiracy, and they got every ounce that they could from those witnesses, and the sum total, as your Honor quite properly acted, the sum total did not add up to a conspiracy in respect to Albert Young, and your Honor at the close of the government's case dismissed the first count.

Now, that left the defendant Young with all of this extranneous matter that had come in under the conspiracy before the jury, and while your Honor charged the jury and admonished them not to consider it, I don't think the human mind is such that after it had been so

steeped, as it were, with all the extraneous matter for almost two weeks of trial, I don't believe that the human mind could erase that. Your Honor denied my motion for a mistrial and a severance, and I submit that that motion should have been granted in the totality of the circumstances that were before the Court.

As your Honor has said, and as the Second Circuit has said, and other Circuits have said, the Court at the preliminary stage must rely on the good faith and the knowledge of the United States Attorney, and if it proves that he is either not knowledgeable or has not acted in good faith, why then the only remedy is to dismiss the count, and I submit in this case you also grant the motion for the severance.

If the United States Attorney had, as I say, in colloquialism, leveled with the Court and had said to the Court, "We have a very weak, if any case, against Albert Young," your Honor would undoubtedly have granted my original motion to dismiss and would have granted my motion for severance, and the defendant Young would have been faced with a trial that would have been vastly different from the case that was tried and the evidence that would have been before the jury would apply solely or primarily to Albert Young and would not have encompassed

all of the extranneous tapes and matters in which there were a lot of hearsay that came into evidence.

THE COURT: I think I understand your point in that regard. I am somewhat short for time this morning. Is there anything else you want to take up with me?

MR. ROSENTHAI: Nothing else I can add, Judge.

THE COURT: All Right. Mr. Herman.

MR. HERMAN: Yes, I will be very brief, your Honor.

We have submitted a memorandum and there is an affidavit. I believe that the Court erred in completely cutting off my cross examination of the main government witness, Mr. Granelli, as appears at page 543 of the transcript in this matter, and that my client was thereby deprived of his rights under the Sixth Amendment, both confrontation and cross examination with the main witness against him.

I was seeking by the particular questions in mind to develop the frame of mind and the turn of mind and the intention of AgentGranelli, which we believe we could have shown was coercive and resulted in coercion against Mr. Wah, causing him to make the payments.

Also, I wished to develop at that time that

there was no basis for Agent Granelli to be talking about narcotics and associating a narcotics deal with Mr. Wah, and I believe that that testimony in this jurisdiction, against a person of the Chinese race, is inherently prejudicial to him and that we should have been allowed, once this tape had been allowed in evidence we should have been allowed to develop it.

Also, by virtue of the cross examination being cut completely short, at that point I was deprived of the opportunity to cross examine on numerous other matters and areas, and while I appreciate that the Court has an obligation to expedite trials --

THE COURT: You weren't cut off in order to achieve expedition, let me assure you of that.

MR. HERMAN: Well, I believe, your Honor, that certainly my cross examination would have been reasonably extensive. On the chronological or factual basis, there was an enormous amount of material which had not been touched upon at all in my cross examination and which I think -- for example, just if I can mention one, there was direct testimony by Agent Granelli about having overheard on November 6th a small portion of a conversation between Agent or Investigator Kibble and Mr. Wah, and that conversation would have taken place some nine days prior to

the first payment. He gave that testimony on direct examination. I was not permitted, not permitted, to cross examine to the point where I would have cross examined with respect to that conversation, and then when Agent Kibble testified, Agent Kibble, who was the man who was allegedly overheard in having that conversation, gave no testimony with respect to that occurence.

I think the deprivation in cross examination with respect to that incident was all important and it touched upon my argument, as I argued the case to the jury that Mr. Wah stood in a different position from all of the other defendants in the case.

THE COURT: Mr. Markewich, don't you have a motion, too?

MR. MARKEWICH: No, your Honor. I have made no motions. I figured I would save them for appeal. I could tell your Honor in one sentence --

THE COURT: If you don't have a motion there is no use telling me.

MR. MARKEWICH: I have no motion.

THE COURT: All right.

MR. MARKEWICH: I just think it was improper not to sever, but I will raise it on appeal when this is over.

THE COURT: All right.

Mr. Cooney, you may respond.

MR. COONEY: Yes, your Honor.

With respect to the motion made by Mr. Young, the government's position is, of course, that it should be denied. In our view the Court has already considered on two occasions and decided the question of severance. To prevail on this motion, Mr. Young would have to establish either that his client was joined in bad faith in this conspiracy or, in fact, he was substantially prejudiced by the joinder.

We clearly feel there is no basis for finding that there was bad faith in this joinder. We set out in Aiker, which he cites as a reasonable expectation of sufficient proof at trial to establish the propriety of the joinder, and the government has already vigorously argued on two occasions that joinder was proper and Mr. Young was a member of this conspiracy and the Court is familiar with that evidence.

Under the Stern case, which the Court referred to in denying the original application or the second application for severance at the time Mr. Young was removed from the conspiracy, one of the factors that may be considered as the modus operandi and prior contacts, or

prior, even hearsay contacts, between the parties, the Court is familiar with our position that Mr. Ong's statements as to whom he was originally speaking for, Mr. Young's statements as to his interest in joining the same deal that Benny had, were clear indications that this was one conspiracy.

The Court has rejected our position, but we still feel that it clearly establishes that there was no bad faith in this joinder. Secondly, there was no prejudice. The Court gave the proper limiting instruction, and a good deal of the evidence that was introduced against Mr. Young in this trial might well have been introduced against him in a separate trial in that he had indicated that he wished to join the same conspiracy in his original dealings with the Agent, and to define the scope of that conspiracy, his intent, his motive, a good deal of the same evidence would have been brought in.

With respect to Mr. Wong Wah's motion, that is a matter obviously that the Court also considered. The ruling of the Court, we contend, was proper. The Court obviously removed the mention of narcotics from the trial to protect the rights of the defendants. This matter became a collateral matter. The Court, in effect,

did not curtail the cross examination. It invited further cross examination of the government witnesses on matters that were not collateral, asking Mr. Herman to proceed, ask other questions on relevant matters. He refused to do so and the Court properly curtailed or stopped his cross examination.

As an indication just by-the-by, Mr. Herman, who apparently feels that there were a good deal of other questions that could have been asked, did not ask Mr. Kibble the question, as I understand it, did not ask Agent Kibble any questions on cross examination when Mr. Kibble was present at most of the same meetings that were the subject of the indictment.

The Court's exercise of its discretion on this point is clearly correct and we would ask the Court to reject the motions.

THE COURT: Gentlemen, I would like to deal first with the question of the curtailment of cross examination because that presents a sensitive question to the Court, and I would say to all of you, Mr. Herman is highly regarded by this Court. His courtroom manner is excellent. He is not what one would characterize as disruptive or anxious to bait the Court in front of the jury, and the Court has no quarrel with Mr. Herman at all

and certainly did not at the time of this trial.

I would say that, starting at the beginning of this issue of the cross examination, the Court had redacted all of the incriminatory material about narcotics or about fixing District Attorney Mackell or effecting a fix with the aid of District Attorney Mackell and there is other inflammatory things that were on the tapes, where motions were made in that regard.

Some narcotics discussion remained on the tapes because I assume counsel thought it exculpatory. Either that or perhaps through neglect. Whatever it be, I think there are some basic rules in the trial of any case, in any Court that I know of, that the Court cannot permit its rulings on objections to be flouted. If somebody asks a question and the Court makes a ruling, the record is then clear, if an objection to that question has been sustained, the attorney has done all that he needs to do and here, in this situation, the record clearly shows that attorney Herman asked a question about narcotics, about an effort on the part of the witness to involve a person in a narcotics deal, an objection was sustained. He came back immediately and reframed the identical question.

"Didn't you in one of those conversations ask Mr. Ong, in the absence of Mr. Wong Wah, whether Mr. Wong Wahcouldn't deal in narcotics for you?"

The witness had been admonished previously that he couldn't talk about narcotics, so he tried to assist the Court by saying that he had been told that he couldn't refer -- and he was cut off before he mentioned the word "narcotics." "Your Honor, I have been told that I can't refer --"

The Court instructed the witness not to volunteer information and again sustained the objection and specifically instructed Mr. Herman, "no more questions along this line," this line being discussions about narcotics.

The jury was then told to disregard the testimony and not to assume the question would call for any affirmative answer, and at that point I said to Mr. Herman, "No more of this."

And then Mr. Herman attempted to argue that point in front of the jury. There was no purpose of a side bar conference at that time because it is clear, I think to almost anybody in the practice of law, that when an objection has been sustained to a question there is absolutely no license to come in the back door with the

same question reframed, not a first time, but a second time and apparently here a third time.

And Mr. Herman was specifically instructed not to make a speech in front of the jury and put another question and finish the cross examination or sit down.

What did he do? He came back immediately and asked the same question. I think this would be a third or fourth time.

"Did you tell Mr. Ong that you had people who were eager to get narcotics from Johnny Wong?"

Now, that is the very same identical question which had been asked two times before and as to which an objection had been sustained twice. There was nothing disrespectful about Mr. Herman's manner in doing so. Had there been, the Court would have found it a proper situation for disciplinary action. There was no point in having a side bar conference because had I conducted a side bar conference I would have been compelled to tell Mr. Herman, in effect, "You know better," and I did not come down here to criticize or revile or complain about practicing lawyers. It is not my practice to get into controversy with lawyers or threaten lawyers with the contempt power of the Court or given to any

acrimony. But one thing is clear to me, when an objection has been sustained twice, no lawyer has the right to come back and ask that very same question the third time around. I won't tolerate it. I have a right to maintain the effectiveness of my evidentiary rulings before the jury and not get into a situation before the jury where my rulings are being flouted by an attorney or where it appears to the jury that there is a question of who is in charge here.

So I just simply don't have to tolerate it and I want the Court of Appeals, when they look over this record, to know why the Court terminated Mr. Herman's cross examination.

Mr. Herman had an opportunity for re-cross examination of the next witness. At no time during the trial did Mr. Herman ever, including every side bar conference, discussions that we had in the absence of the jury, ever until today state that there was some particular area that hadn't been covered by the grinding cross examination of the other attorneys, which was extremely thorough, that had been missed by them, or that he wanted to touch upon.

The jury had been instructed that all cross examination redounded to the benefit of every defendant,

and I want my position in this matter to be entirely clear on this record. If I were confronted with the same problem, I would do it again, and but for the high regard in which I hold Mr. Herman and but for the fact that his manner was not disruptive or insubordinate toward the Court, I would have felt that this type of conduct, of asking the same question over again a third time after two adverse rulings, is reprehensible and calls for sanction by the Court.

Now, that is the end of that one.

MR. HERMAN: May I be heard briefly, your Honor?

THE COURT: Oh, certainly, Mr. Herman. There is nothing personal with you. I mean every word of it when I say I regard you highly, but you had no right to do what you did in that trial.

MR. HERMAN: Well, I thank you for that, and I would like to explain my position briefly, if I may.

First of all, I have the greatest respect for your Honor. I believe that your Honor was fulfilling his function as he saw fit. I do believe that I --

THE COURT: It is the same question three times, Mr. Herman.

MR. HERMAN: I do not believe the questions were identical, your Honor. I believe under the cases

of United States against Sanchez, United States against Leighton, I have an obligation to press certain matters lest I be later found in an Appellate Court to have waived those matters, and that was all I was doing for my client and, I believe, although perhaps I wo uld be much more artistic about it and much more articulate about it, that I again would do the same thing, perhaps in a more artistic, or articulate or skillful manner for my client if I were confronted with that.

THE COURT: There is nothing wrong with your skills.

Now, let us take the other matter, the matter of Mr. Young's problem. I think I ought to make an observation which hasn't been made. I previously made a finding, to which I adhere, that the government joined these defendants and resisted the motions for severance in perfect good faith.

The government had reasonable grounds to believe that it could prove Mr. Young's participation in the conspiracy. I think they still think they could. Reasonable people can differ on these things, and that doesn't necessarily mean that the Court was wrong in either of its determinations.

One fact which hasn't been mentioned: at the

inception of this case, it was apparent that one of the other co-defendants, and I believe it was Mr. Wah -- am I correct in that -- was a partner in that Catherine Street or was an officer along with Mr. Young in the Association which owned and controlled the Catherine Street premises.

The government was approaching this issue on the theory, as the Court understood it, that as to the conspiracy Mr. Young had a stake in the outcome, that his gambling house, in which Wong Wah had some sort of a position or capacity or interest, call it what you will, would theoretically be benefitted if the conspiracy succeeded and it is not unreasonable to believe, nor is it illogical that a person could participate in a conspiracy, have a stake in its outcome, make it something he wanted to succeed, and at the same time disclaim in discussion with persons who were not to be trusted, because they might be undercover agents, as, in fact, they turned out to be, any interest in it.

The Court simply reached a conclusion, when the government rested, that the state of the record, and the state of the evidence was such that a reasonable juror, acting reasonably, could not convict Mr. Young of the crime of conspiracy as charged beyond a reasonable

doubt, and that is all that I found, and I hope that this motion doesn't seek to place the Court in a dilemma, where, as in this case, and I must say the guilt of Mr. Young on the substantive counts -- and this goes for all the defendants -- is extremely clear -- no question about the substantive counts, and it is hard for the Court to imagine any kind of an error in this trial which would not be harmless error beyond a reasonable doubt, and I don't encourage error, but we do not want to be in a quandry where we find a person should be acquitted on a conspiracy charge, either because of the Kotteakos Doctrine or because of the failure of proof or any other reason, and then find that simply by granting the motion we have opened up the door to a collateral attack on substantive guilt, which is abundantly clear, and I do also agree that most of the evidence produced on the conspiracy count could be heard by the jury in a separate trial of Mr. Young and, as I say again, it is not inconceivable if a man's partnership or a man's joint venture is being benefitted by the conspiracy, that he might be held, on a slightly better record, he might be held a member of the conspiracy even though he is going around disclaiming, and even though the other people in the conspiracy are telling the

undercover agents, "Don't trust Albert Young." Stranger things than that happen all the time.

In this particular case there was just not enough evidence of Young's knowing and willful joining of this conspiracy to allow a juror to find guilt beyond a reasonable doubt. But that doesn't mean that he couldn't have been a member in spite of what was done and said. Just wasn't in it beyond a reasonable doubt, and that is all the Court's finding on the Rule 29 motion for Mr. Young can be deemed to convey.

Now, is there anything that I haven't covered or anything that you want me to take up at this time to complete the record on this application?

MR. ROSENTHAL: The only thing, your Honor, is this --

THE COURT: The motions are denied and the Court will mark them "So ordered, based on this transcript."

Yes, sir, what did I overlook?

MR. ROSENTHAL: No, you didn't overlook anything, but your Honor followed the contention of the government, which was not established in the trial, that Mr. Young and Mr. Wah were partners.

THE COURT: I didn't really say they were

partners. As I understand it, Mr. Wah had been elected to a position in this --

MR. ROSENTHAL: As an under secretary or vice-secretary of the same organization.

THE CLIENT: Your client was secretary and he was vice-secretary.

MR. ROSENTHAL: But the testimony in the record was clear that Mr. Wah did nothing in respect to the One Catherine Street.

THE COURT: I don't know if he said, "Did nothing." He discussed it with the co-defendant Ong and the undercover people and, implicit, at least by his silence, was his intention that payments be made from the Catherine Street premises. But what Mr. Wah did is not binding on your client in your client's absence as far as proving knowing participation, so that you can't be adversely affected by what Mr. Wah said in your client's absence.

When I say you can't be, I mean the client can't b .

MR. ROSENTHAL: I understand, Judge.

THE COURT: All right. Can we have a date fixed for you all to come back?

MR. MARKEWICH: Your Honor, may I be heard

about that, just the sentence date?

THE COURT: Yes, certainly. Maybe we can set a date off the record. Perhaps we don't have to have a big hearing about the date.

MR. MARKEWICH: Fine, off the record would be just as well.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: The date for sentence will be fixed as February 11 at 9:30 a.m. Each defendant is instructed with respect to his obligation to be here at that time. All I see is Mr. Young. Where are the others?

MR. ROSENTHAL: Mr. Young and Mr. Wong Wah are here.

MR. MARKEWICH: Mr. Ong was told he doesn't have to be here.

THE COURT: You understand your obligation to be here on the 11th of February, at 9:30?

DEFENDANT WAH: Yes, sir.

DEFENDANT YOUNG: Yes, sir, your Honor.

THE COURT: And you will instruct your client.

MR. MARKEWICH: Yes, I will. Of course, Mr. Cuddihy is not here and also Mr. Tom Hom.

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MR. COONEY: We will notify him.

MR. ROSENTHAL: Does your Honor know what courtroom you will be sitting in in February?

THE COURT: I never know. Probably right here. But you will have to look for me if I am not here.

All right. The matter is continued for all purposes.

MR. COONEY: Thank you, your Honor.

MR. ROSENTHAL: Your Honor, I assume your Honor has received the probation reports?

THE COURT: Yes, and any attorney who wishes to look at the probation report ought to do so before the date of sentence.

MR. ROSENTHAL: That's right.

THE COURT: You can make arrangements with my chambers.

MR. ROSENTHAL: Thank you.

MR. MARKEWICH: Thank you very much.

(Adjourned for sentencing on February 11, 1976 at 9:30 o'clock, a.m.)

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

BENNY ONG, WONG WAH, YOM HOM AND ALBERT YOUNG,
Defendants- Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York

That on the 9th *day of* April *19* 76 *at* see attached

deponent served the annexed APPENDIX ~~BRIEF~~ *upon* see attached

the Attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 9th *day of* April *19* 76

Victor Ortega

VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

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